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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह प्राप्तग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

नोटिस

NOTICE

नीचे लिखे भारत के अतिथारण राजपत्र 17 जनवरी 1968 तक प्रकाशित किये गये :—

The undermentioned Gazettes of India Extraordinary were published up to the 17th January, 1968.

| Issue No. | No. and Date | Issued by | Subject |
|----------------------------------|-----------------------------------|---|--|
| 8 | S.O. 95, Dated 4th January, 1968. | Ministry of Finance | Notifying the National Industrial Development Corporation Limited, New Delhi for the purposes of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961). |
| 9 | S.O. 96, Dated 5th January, 1968. | Ministry of Food, Agriculture, Community Development and Cooperation. | Delegation of powers under the Essential Commodities Act, 1955 in relation to prices, stocks and movements of cattle fodder of any varieties specified in the schedule therein, to the Collectors of certain districts of Rajasthan. |
| 10 | S.O. 97, Dated 6th January, 1968. | Ministry of Education. | The International Copyright (First Amendment) Order, 1968. |
| प्र० 98, दिनांक 6 जनवरी, 1968 | | शिक्षा मंत्रालय | अन्तर्राष्ट्रीय कापी राइट (प्रथम संशोधन) आदेश 1968। |

| Issue No. | No. and Date | Issued by | Subject |
|--------------|-------------------------------------|---|---|
| 11 | S.O. 99, Dated 6th January, 1968. | Ministry of Finance. | Authorising Shri P. C. Banerjee to be a Tax Recovery Officer. |
| | S.O. 100, Dated 6th January, 1968. | Do. | Authorising Shri M. N. Sinha to be a Tax Recovery Officer. |
| | S.O. 101, Dated 6th January, 1968. | Do. | Authorising Shri P. R. Choudhury to be a Tax Recovery Officer. |
| 12 | S.O. 102, Dated 8th January, 1968. | Ministry of Information and Broadcasting. | Approval of the film as specified therein. |
| 13 | S.O. 103, Dated 8th January, 1968. | Ministry of Commerce. | Appointing the 8th day of January, 1968 as the date on which the Cotton Textiles Companies (Management of undertakings and Liquidation or Reconstruction) Act, 1967 (29 of 1967) shall come into force. |
| 14 | S.O. 216, Dated 10th January, 1968. | Ministry of Industrial Development & Company Affairs.] | Extending the date of management of the India Electric Works Ltd. Calcutta for a further period of three months from the 11th January, 1968. |
| 15 | S.O. 217 Dated 10th January, 1968. | Election Commission India.] | Bye-election to the House of the People from the 13-Mondya Parliamentary Constituency. |
| 16 | S.O. 218, Dated 11th January, 1968. | Ministry of Commerce. | Declaring the Tyres and Tubes of Scooters (including Scooter Rickshaws and Auto Rickshaws) to be an essential commodity. |
| 17 | S.O. 219, Dated 15th January, 1968. | Ministry of Commerce. | Amendment to notification No. S.O. 2384, dated the 17th July, 1967. |
| 18 | S.O. 220, Dated 15th January, 1968. | Ministry of Information and Broadcasting. | Approval of the films as specified therein. |
| 19 | S.O. 221, Dated 15th January, 1968. | Ministry of Food, Agriculture, Commodity Development and Cooperation. | Further amendment in the Order No. S.O. 3376, dated the 30th October, 1962. |
| 20 | S.O. 311, Dated 16th January, 1968. | Ministry of Home Affairs. | Declaring the Mizo National Front as an unlawful association. |
| 21 | S.O. 312, Dated 17th January, 1968. | Ministry of Commerce. | The Export of Footwear (Inspection) Amendment Rules, 1967. |

ऊपर लिखे असाधारण राजपत्रों की प्रतियां प्रकाशन प्रबन्धक, सिविल लाइन्स, दिल्ली के नाम मांगपत्र भेजने पर भेज दी जाएँगी। मांगपत्र प्रबन्धक के पास इन राजपत्रों के जारी होने की तारीख से 10 दिन के भीतर पहुंच जाने चाहिए।

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

भाग II—भाग ३—उपभाग (ii)

PART II—Section 3—Sub-section (ii)

(राजा प्रतालप सो लोडकर) भारत सरकार के वन्नमतदारों द्वारा (संघ मंत्र प्रशासन को लोडकर) केन्द्रीय प्रबिलरणी द्वारा जारी किए गए विविध प्रावेश द्वारा अधिकृतमात्र।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

ELECTION COMMISSION, INDIA

New Delhi, the 15th January 1968

S.O. 316.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 4th December, 1967 by the High Court for the States of Punjab & Haryana at Chandigarh, in Election Petition No. 37 of 1967

FIT FOR INDEXING

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH
ELECTION SIDE

ELECTION PETITION NO. 37 OF 1967

Shri Jai Singh son of Shri Beli Ram resident of Mankotia House, Civil Lines Hoshiarpur.—*Respondents.*

Versus

1. 1. Shri Ram Kishan son of Shri Ram Chand resident of Mohalla Bikrampura, Jullundur City.

2. Shri Chanan Singh son of Shri Basant Singh resident of village Dhut Tehsil and District Hoshiarpur.

3 Shri Bhagat Singh son of Shri Inder Singh resident of Peeli Kothi, Sutehari Road, Hoshiarpur.

4. Shri Pran Nath son of Shri Bhagat Ram resident of Block No. 505 New Rajendra Nagar, New Delhi.

5. Shri Jowala Singh son of Shri Mehar Singh of village Dagana Khurd, Tehsil and Distt. Hoshiarpur.

6. Shri Kartar Singh son of Shri Ram Kishan resident of Kartar Nagar, Hoshiarpur.—*Respondents*

Petition under sections 80, 80A and 81 read with sections 100 and 101 and other provisions of the Representation of the People's Act 1951 praying that the election of respondent No 1 from the Hoshiarpur Parliamentary Constituency be declared void and further declare that the petitioner be declared as duly elected member of the Lok Sabha from this constituency.

Dated the 4th December, 1967.

PRESENT:

The Hon'ble Mr Justice D. K. Mahajan.

For the petitioner:—Mr. Rajinder Sachar, Advocate with Mr. Malook Singh, Advocate.

For the Respondents:—Mr. J. N. Kaushal, Advocate with M/s D. S. Nehra, Ashok Bhan and M. R. Agnihotri, Advocates.

JUDGMENT

In this election petition, under section 81 of the Representation of the People's Act, 1951, (hereinafter referred to as the Act), the contest is between Major General

Jai Singh (retired) and Comrade Ram Kishan, the former Chief Minister of United Punjab. Major General Jai Singh (hereinafter referred to as the petitioner) and Comrade Ram Kishan (hereinafter referred to as the respondent) were candidates for the parliament along with five others from the Hoshiarpur parliamentary constituency (hereinafter referred to as the constituency). The petitioner contested the election seemingly as an independent candidate; but in fact he was a candidate sponsored by the Jan Sangh. The respondent contested on the Congress ticket. The Hoshiarpur parliamentary constituency consists of the following assembly constituencies:—

1. Hoshiarpur
2. Garhshankar
3. Balachaur
4. Sham Chaurasi
5. Tanda
6. Dasuya
7. Nangal and
8. Anandpur or Anandpur Sahib.

The Deputy Commissioner, Hoshiarpur was the Returning Officer for the constituency.

The parliamentary constituency went to the poll on the 19th of February, 1967. There were four counting centres for this constituency:—

1. Hoshiarpur including Tanda at Hoshiarpur.
2. Dasuya.
3. Garhshankar including Balachaur and
4. Anandpur or Anandpur Sahib.

The counting took place on the 21st and 22nd of February, 1967. The final counting of this constituency was to be done at the Zilla Parishad Hall at Hoshiarpur. The result-sheets of the counting done on the 21st and 22nd of February, 1967, were to be tabulated; the postal ballots had to be counted and after dealing with any application for recount after the preparation of form 20, the final result had to be declared. After form 20 had been filled in, two applications were presented to the Returning Officer by the petitioner, namely, Exhibits P.W. 52/2 and P.W. 35/1. In the first application (Exhibit P.W. 52/2), only recount of the ballot papers pertaining to Garhshankar and Balachaur constituencies was demanded. In the second application (Exhibit P.W. 35/1), the prayer was that the re-counting of votes be done by the Returning Officer himself with regard to Tanda, Balachaur, Garhshankar and Anandpur Sahib constituencies.

The following reasons for the recount in the first and second applications were stated:—

| <i>Reasons, as given in the first application (Exhibit P.W. 52/2)</i> | <i>Reasons, as given in the second Application (Exhibit P.W. 35/1).</i> |
|---|---|
| 1 | 2 |

2. That the Assistant Returning Officer of Garhshankar was not impartial and he had counted the votes arbitrarily without caring the least for the rules and the Election Law.

2. That the Assistant Returning Officer of Garhshankar was not impartial and he had counted the votes arbitrarily without caring for the rules and law on the point. The doubtful votes had been arbitrarily rejected against the petitioner. Even bundles of votes were not checked by the Assistant Returning Officer while finalising the counting. The votes actually polled in favour of the petitioner were placed in the bundles of other candidates and thus counted against the petitioner. The polling agents of the petitioner lodged objection before the Assistant Returning Officer who refused to entertain any such objection. This partial and illegal attitude of the Assistant Returning Officer has materially affected the votes actually polled in favour of the petitioner. Even the counting agents of the petitioner were not allowed to inspect the doubtful votes. Thus the provisions of Rule 56-A(3) have been violated.

3. That the Assistant Returning Officer had committed the following glaring violations of the rules and due to that the petitioner is justified in getting the recount in Garhshankar constituency.
- (a) That the Assistant Returning Officer had given decision of the doubtful votes arbitrarily without asking any objection from the candidate, election agent, or the counting agents, although Rule 56-A(3) imposed duty on the Assistant Returning Officer to allow the counting agents reasonable opportunity to inspect the ballot papers before decision (affidavit of the counting agent is attached herewith).
- (b) That the two counting agents of the petitioner were turned out for two hours by the Assistant Returning Officer without assigning any reasons.
- (c) That the Assistant Returning Officer did not try to inspect the bundles of votes cast in favour of each candidate although he was requested by the counting agent that he should inspect the bundles because the bundles of votes polled in favour of the petitioner were tied in the bundle of the other candidates and the total votes had been illegally shown more against the petitioner. The counting agents of the petitioner did lodge objections in this respect before the Assistant Returning Officer but the latter refused point blank to entertain the objections in writing.
4. As for the Balachaur constituency is concerned, the Assistant Returning Officer had illegally rejected a large number of petitioner's votes without affording an opportunity of inspection to the petitioner's counting agents or giving them any facility to inspect the same.
5. That the Assistant Returning Officer, Balachaur had illegally rejected the legal ballots without assigning any reasons although on the very face of the ballot the same could not be rejected.
6. That the Assistant Returning Officer of Balachaur constituency and Garhshankar constituency is the same man and the petitioner has bona fide and genuine apprehension that the said officer is not impartial and he appears to be biased against the petitioner and openly shows favour by his conduct to Comrade Ram Kishan who appears to have obliged him when he was the Chief Minister.
3. These very irregularities (as mentioned in para 2 above) were repeated in the counting of Balachaur votes where the Assistant Returning Officer happened to be the same man who was Assistant Returning Officer for Garhshankar. The Petitioner has bona fide and genuine apprehensions that the said officer is not impartial and he appears to be biased against the petitioner and openly shows favour by his conduct to Comrade Ram Kishan who appears to have obliged him when he was the Chief Minister.
4. That in Balachaur there were three ballot papers which bore the impression of another parliamentary constituency. The ballot papers did not relate to Hoshiarpur parliamentary constituency. The issuance of these ballot papers was against Rule and Law. Such spurious ballot papers have given rise to a genuine apprehension that many such other ballots were also issued in the constituency. The spurious ballot papers bear number 058448 and 058678.
5. In Tanda constituency one ballot paper not relating to Hoshiarpur Parliamentary Constituency was issued. This fact also has the same legal repercussions as mentioned in para 4 above.
6. The Assistant Returning Officer, Tanda has wrongly and illegally rejected as doubtful many ballot papers which were actually in favour of the petitioner. On the other hand, many doubtful ballot papers have been given in favour of the Congress candidate which were fit to be rejected on the very face of these.

The applications were disposed of by the Returning Officer by the following order, Exhibit P.W. 1/2:—

"Shri Jai Singh, the Jan Sangh candidate from the 6-Hoshiarpur Parliamentary Constituency, presented an application, after the announcement of total number of votes polled by each candidate, requesting for a recount of the votes relating to Garhshankar, Balachaur, Tanda and Anandpur Sahib assembly constituencies which form part of the Hoshiarpur Parliamentary constituency. The grounds for the recount of votes, as stated in the application, were the illegal and irregular rejection of votes, violation of rules and election law in the matter of counting of votes, denial of opportunity of inspection to his counting agents, non-checking of bundles by the Returning Officers of these assembly constituencies, and the inclusion of the votes of Shri Jai Singh in the bundles of Shri Ram Kishan, the Congress candidate.

2. No specific/particular polling station in respect of which these irregularities had been alleged could, however, be cited by Shri Jai Singh. The allegations made were in general and not for a particular polling stations. It was brought to my notice by the returning officers for these assembly constituencies who were responsible for the counting of parliamentary votes also, as the assistant returning officers for the 6-Hoshiarpur Parliamentary Constituency, that no objection, in writing, was lodged with them at the time of counting of votes. Since Shri Jai Singh could not indicate any specific/particular polling stations in these constituencies for the purpose of recount of votes, I decided that a substantial number of rejected votes and those counted for Shri Ram Kishan, the Congress candidate, may be recounted/rechecked to ascertain the truth in his allegation. Shri Jai Singh agreed and left the counting hall, leaving Shri B. D. Kalia and Shri Parkash Dev Sharma to watch his interest. Shri Bhagat Singh Mengowalia and Shri Ram Kishan, the candidates from this constituency, along with Dr. Bal Kishan, a counting agent of Shri Ram Kishan, remained present throughout the checking.

3. In the first instance, the rejected votes of ten polling stations each in the Tanda, Anandpur Sahib, Balachaur and Garhshankar constituencies, were taken out for being rechecked/recounted. On recounting these rejected votes it was found that the rejection in all cases was quite in order and the counting was also correct. At this stage Shri B. D. Kalia stated that further rechecking/recounting of rejected votes was not necessary as they were satisfied in this regard.

4. Since a general allegation was made that the votes cast in favour of Shri Jai Singh had been included in the bundles of Shri Ram Kishan, the Congress candidate, and since no specific/particular polling stations was cited in respect of this irregularity/illegality, I decided that in the first instance bundles of the votes, counted for Shri Ram Kishan in ten polling stations each of the aforesaid four constituencies, may be rechecked/recounted. On rechecking/recounting of the bundles pertaining to 10 polling stations each in Balachaur, Garhshankar and Tanda assembly constituencies and taken out at random, it was found that no vote of Shri Jai Singh or for that matter any other candidate had been included in the bundle of Shri Ram Kishan, the Congress candidate. In the rechecking/recounting of bundles pertaining to the 10 polling stations of the Anandpur Sahib constituency and taken out at random, it was, however, found that five votes out of which three should have been rejected and two belonging to other candidates, had been included in the bundles of Shri Ram Kishan, the congress candidate. Bundles of 10 other polling stations pertaining to the Anandpur Sahib constituency were then taken out and on their rechecking and recounting no such other case was found out. In view of the negligible number of such votes in the bundles of 20 polling stations it was obvious that their mixing up in the bundles of Shri Ram Kishan, the congress candidate, was because of inadvertence and not because of any deliberate or intentional design on the part of the counting officers. Moreover, no such case was brought to the notice of the returning officer, Anandpur Sahib, assembly constituency by the counting agents of Shri Jai Singh or any other candidate at the time of counting and hence it was apparent that this wrong inclusion was the result of inadvertence. In view of the negligible number of such votes found out from the bundles of twenty polling stations, Shri B. D. Kalia stated that further recounting/rechecking was not necessary even on this account as he was fully satisfied that such stray cases were because of inadvertence and of no material or consequential effect on the election. On his satisfaction further rechecking/recount of the votes cast in favour of Shri Ram Kishan in the Anandpur Sahib constituency was stopped. Shri Jai Singh also arrived in the counting hall at this stage and expressed his satisfaction.

5. It was also alleged that spurious ballot papers, which did not relate to the Hoshiarpur parliamentary constituency, were issued in the Balachaur assembly constituency, and two ballot papers bearing numbers 058448 and 058678 were cited in this regard in the application of Shri Jai Singh. On a scrutiny of the rejected votes pertaining to the Balachaur constituency, these ballot papers were found out. It was discovered that "Hoshiarpur was printed on these ballot papers, but on the upper half of the ballot papers the names and symbols of the candidates in the 6-Hoshiarpur parliamentary constituency were printed whereas on the lower half the names and symbols of the candidates in the Jullundur parliamentary constituency were printed. Clearly it was a case of printing error and only two such ballot papers were found out from the bundles of about fifty polling stations pertaining to the Anandpur Sahib Tanda, Garhshankar and Balachaur assembly constituencies. These votes had rightly been rejected by the concerned returning officer. Shri B. D. Kalia at this stage stated that further rechecking/recounting was not necessary in this regard as these votes had been rejected rightly and only two such votes were found out from the bundles of fifty polling stations recounted/rechecked till then. Hence the rechecking/recounting was stopped at this stage.

6. Thereafter the result sheet, already prepared, was amended to the extent of five votes, found to have been wrongly included in the bundles pertaining to Shri Ram Kishan, the congress candidate. After making the necessary amendment in the result sheet the final result was announced and Shri Kishan, the congress candidate, was declared elected in the presence of Shri Jai Singh, Shri Bhagat Singh Mehgowalia and Shri Ram Kishan, the candidates, and Shri B. D. Kalia and Shri P. D. Sharma, the counting agents of Shri Jai Singh and Dr. Bal Kishan, the counting agent of Shri Ram Kishan".

There is a serious conflict as to the stage at which this order was passed; and this matter will be discussed later on at its proper place. In short, the grievance of the petitioner is that the recounting of these four constituencies was permitted by the returning officer; but was not taken to its logical conclusions; whereas according to the respondent and the returning officer the petitioner, after a partial recount, was satisfied that his grievances in the applications for recount could not be substantiated and, therefore, he did not insist upon complete recount of these constituencies. The final result was declared, according to the petitioner, between 5-30 P.M. and 6-00 P.M; and according to the respondent and the returning officer, between 7-00 P.M. and 8-00 P.M. The total votes polled by the respondent are 95,877; and by the petitioner, 94,366; and the difference between the votes polled by the respondent and the petitioner is 1511. Before the recount in form 20, the difference was 1517. As a result of the partial and incomplete recount, the difference dropped to 1511 from 1517.

The present petition was filed on the 10th of April, 1967. After service of notice, the respondent filed his written statement on the 12th of May, 1967. Certain objections were raised to the petition under section 83 of the Act. Those objections were decided in favour of the respondent and ultimately, the amended petition was filed on the 2nd June, 1967. The respondent filed his additional reply to the allegations that had been brought in in the amended petition. On the pleadings of the parties, the following issues were framed:—

1. Whether the petitioner is entitled to a recounting of votes and scrutiny on the basis of the allegations made in the petition?
2. Whether the respondent No. 1 himself or through his agent or with the help of other persons, with his consent, committed corrupt practices within the meaning of section 123(4), 123(2), 123(3) and 123(7) and 123(1) of the Representation of the People Act, as alleged in paragraphs 16, 17, 19, 20 and 21?
3. In case the election is set aside, is the petitioner entitled to be declared elected? and
4. Whether the result of the election has been materially affected in so far it concerns the respondent?".

Voluminous oral evidence has been led in the case and most of the evidence is of highly partisan character and unconvincing. I have been noting down my observations on the oral evidence recorded at the close of the day so that at the time of appraisal of the same, I may have a complete picture as to the demeanour of the witnesses and as to the veracity of their testimony.

The learned counsel for the petitioner has confined himself now in arguments to the following three contentions. The other contentions raised in the petition have not been argued and, therefore, they must be taken to have been dropped.

I. That the returning officer having accepted the prayer for the partial recount was in error in not pursuing it to its logical conclusion. He abruptly stopped the recount because of the extraneous pressure brought to bear upon him. That neither the petitioner nor his counting agents stated to the Returning Officer, after recounting had proceeded for a while, that they were satisfied and that the application for recount had no merit. It is, therefore, prayed that the recount of the four constituencies, which was prayed for before the Returning Officer, should be ordered. The grounds, on which recount is claimed and which, according to the counsel, are established, are—

1. that the ballot papers had been rejected against the rules, namely, that a ballot paper, which bore a mark with the official stamp and also had a smudge, had been rejected whereas it could not be rejected.
2. that the order of rejection of the ballot papers had been written by a person other than the Assistant Returning Officer.
3. that a number of ballot papers, the grounds for rejection of the ballot papers have not mentioned.
4. that spurious ballot papers were found in the ballot boxes of Tanda (one in number) and Balachaur (two in number), and
5. that the partial recount disclosed that five ballot papers, which had not been polled in favour of the respondent, had been tied in bundles belonging to him and counted in his favour. One of such ballot papers had been clearly polled in favour of the petitioner. Two of them were invalid. One was polled in favour of Bhagat Singh, another candidate; and one in favour of Kartar Singh, again another candidate.

II. That the following false statements were made against the petitioner in the posters, Exhibits P.W. 10/6 and P.W. 18/1.—

Poster Exhibit PW 10/6. (Relevant Portion)

Official English Translation

DESH SE GADDARI KAUN KARTA HAI ?

Who betrays the country ?

DESH MAIN ZINDA INSANON KO KISI NEN JALAYA ?

Will our people give up country ?

HAMEN DESH KE GADDAR JAANIJI KI ZAROORAT NAHIN : JOKE HAR LARRAI KE MAIDANE-JANG KA BHAGORRA HAI.

We do not require a traitor-General, who betrayed the country in every battle-field.

Poster Exhibit PW. 18/1 (Relevant Portion)

Official English Translation

CHANDARMAN — MAIDANI-JANG SE BHAGNA, AMAN KE JARNAIL-LACHAR TAQRIRON SE GUMRAH KARNA HOGA.

MCCN — To flee from the battle-field. The general of the peace. To mislead (public?) with lecher speeches.

According to the learned counsel for the petitioner, these allegations are in relation to the personal character of the petitioner; and are false and amount to a corrupt practice within the meaning of section 123(4) of the Act; and

III.—That the respondent attempted to obtain assistance of Government servants for furtherance of his prospects in the election; and, therefore, is guilty of a corrupt practice within the meaning of section 123(7) of the Act

I now proceed to examine the above contentions in the order in which they have been set out:—

Contention No. I.

It is not necessary to discuss the various arguments advanced by the learned counsel for the petitioner regarding this contention because the learned counsel fairly and frankly conceded that he will have no case, so far as far as this contention is concerned, in case the statement of R.W. 1, Shri S. P. Bagla, the Returning Officer is accepted in its entirety. After considering all the facts and circumstances of this case, I have no reason to doubt that Shri S. P. Bagla made a truthful, fair and frank statement. I have no reason whatever to doubt the veracity of any part of his statement. I am not unmindful of the fact that on certain matters deposed by him, there are discrepancies when his statement is considered with reference to other oral evidence. But most of that evidence is of a worthless type; and the discrepancies created by that evidence warrant no justification to hold that Shri Bagla has not made a true and correct statement. On the other hand, there is intrinsic evidence in the case which supports my conclusion, besides the demeanour of the witness in the witness-box, that Shri Bagla made a true statement and there is no reason to discard it or to doubt its veracity.

The counting of the parliamentary ballot papers took place along with the counting of the Vidhan Sabha ballot papers. This counting took place on two dates, 21st and 22nd of February, 1967. Only postal ballots, which are less than a thousand, had to be scrutinised on the 23rd February, 1967, at the time of the final counting. At the time of the counting on the 21st and 22nd February, 1967, there is no cogent and convincing evidence that any complaint was made by the petitioner or his counting agents regarding any defect in that counting. It is conceded that no written complaint was made to the Assistant Returning Officers in this behalf. It is for the first time that complaints were made to the Returning Officer regarding the counting held on 21st and 22nd, after the picture had emerged that the petitioner had lost the election. The respondent had a clear lead over the petitioner as a result of that counting. If one refers back to the two applications presented to the Returning Officer on the 23rd of February, 1967, it will be clear that they do not contain any facts leading to the conclusion that the counting on the 21st and 22nd February was not properly done. As observed by the Returning Officer, the allegations were of a general character; and in spite of the allegations being of a general character, the Returning Officer, in order to satisfy the petitioner, proceeded to examine the ballot papers at random to see whether the grievance of the petitioner was justified. After having examined fairly large number of ballot papers and when the errors discovered were of a very minor nature and at the behest of the counting agents of the petitioner and the petitioner himself, further checking of the ballot papers was stopped. The petitioner's case is that he was not agreeable to this course and he wanted the checking to be done of all the remaining ballot papers regarding which the prayer had been made in the two applications. I am unable to accept this assertion on the part of the petitioner because if what the petitioner says is correct, he would have immediately made an application to the Returning Officer making this grievance. In any case, a complaint would have been made to the higher authorities. It is admitted by the petitioner that no such complaint was made either to the Returning Officer or to the higher authorities. The matter is put beyond the pale of controversy by the fact that in the present petition, there is no allegation by the petitioner that whatever is recorded in the order of the Returning Officer was incorrectly recorded. There is no allegation in the petition that Shri Kalia, the counting agent of the petitioner did not state before the Returning Officer that he was satisfied with the rechecking of the ballot papers and did not wish the Returning Officer to proceed further in the matter of limited recount. P.W. 35, Shri Parkash Dev, a counting agent of the petitioner, who was present in the counting hall, had admitted that the order of the returning officer, Exhibit P.W. 1/2, was dictated by him in the presence of the parties. Moreover, in the petition, there is no concise statement of material facts, as required by section 83(1) of the Act, which would justify an order for scrutiny of the ballot papers. In view of these facts, I see no reason to doubt the veracity of R.W. 1, Shri S. P. Bagla. I am clearly of the view that no case has been made out, so far as the first contention is concerned. I accordingly repel the first contention.

Contention No. II.

Before dealing with the merits of this contention, it will be proper to set out the pleadings and also the evidence, that has been led to prove the same. In

paragraph 16 of the amended petition, so far as it is relevant for the purpose of this contention, it is stated that:-

| Pleadings in the amended petition | Reply in the written statement |
|-----------------------------------|--------------------------------|
| I | 2 |

Paragraph 16

The corrupt practices within the meaning of section 123(4) of the Representation of the People Act have been committed by respondent No. 1, his agents or other persons with the consent of respondent 1, of which the particulars are as follows

(a) That respondent, his agents and other persons, with his consent brought out posters in which they made statements which were false and which they believed to be false and which they did not believe to be true in relation to the personal character, conduct and candidature of the petitioner and these statements and posters were reasonably calculated to prejudice the prospects of the petitioner's election..... A poster was published with the consent of respondent 1, by Shri Krishan Parshad Chopra, who was the election incharge of the respondent No. 1's election campaign. In the said poster, the petitioner was described as "DESH KA GADDAR JARNAIL—HAR LARRAI KE MAIDANEJANG KA BHAGAURRA".... This poster was widely circulated in the constituency by pasting it on the walls and other places by respondent No. 1 and his agents—Lakshmi Chand Gupta son of Rajinder Nath Gupta and Sarwan Ram son of Jiwani Ram.

Paragraph 16

Paragraph No. 16 of the petition is incorrect and denied. It is wrong to say that any corrupt practices within the meaning of section 123(4) of the Act were committed by respondent 1 or his agents or any other person with the consent of the answering respondent. In fact, no such agent was ever appointed by the respondent except the polling agents and the counting agents.

(a) Part (a) of para 16 of the petition is incorrect. No poster was ever issued in which any statement was made which was false or which respondent 1 believed to be false and which he did not believe to be true in relation to the personal character, conduct and candidature of the petitioner. Shri K. P. Chopra was not the agent of the answering respondent. The poster, annexure A.2 (Exhibit PW1/6) was not issued with the consent of the answering respondent. In fact he had no knowledge of it whatsoever. Even its draft was not shown to him. It is also denied that the poster was widely circulated in the constituency. At any rate, the poster in question cannot be treated more than a routine poster in an election and, in any event this cannot be taken as a statement reasonably calculated to prejudice the prospects of the petitioner's election.

It is further submitted that the answering respondent, after the receipt of the notice of this election petition contacted Mr. K. P. Chopra to find out as to what was meant by him, when the following line was written in the poster :-

"DESH KA GHADDAR JARNAIL HAR LARRAI KE MAIDAN KA BHAGORRA."

On this Mr. Krishan Parshad told the answering respondent that the petitioner did not offer his services by going on active duty when two last aggressions were committed against India by China and Pakistan. In the case of attack by Pakistan the battle was on the borders of the Punjab itself. According to him this conduct on the part of the petitioner was not worthy of a retired Major General and it amounted to thin running away from the battle field, when the country was in a distress and subject of attack by two hostile countries. According to Krishan Parshad, the information regarding the petitioner's not offering his services was conveyed to him by a number of responsible persons and he believed it to be true.

(b) * * * * *

(b) * * * * *

(c) That similarly another handbill was published with the consent of respondent 1 by Krishan Parshad Chopra, election incharge of respondent 1, under the heading "KALJUGI BHRI-GU JI KA FARMAN". In this pamphlet, false statements were made concerning the Bhartiya Jana Sangh, whose organisational support and symbol, the petitioner had taken to contest the election.

Pleading in the Amended petition

18. That the petitioner has a commendable record of service. He had retired on full pension. False statements made by respondent No. 1 and his agents to the effect that he was a deserter of every battle field and he was a traitor general of the country had given a bad shock in the minds of the public. On account of these statements which were false and which respondent No. 1 and his agents did not believe to be true and these statements were reasonably calculated to prejudice the prospects of the petitioner's election. Such like false statements were in relation to and cast a great smear on the personal character conduct and candidature of the petitioner.

(c) Sub-para (c) of para 16 of the petition is denied.

Note :—(It is not necessary to set down the reply because it is not the case of the petitioner that this postal contained allegations against the personal character of the respondent.)

Reply in the written statement

18. Para No. 18 of the petition is denied. The petitioner is put to proof of the allegations made in this paragraph. The circumstances in which Shri Krishan Parshad issued poster, Annexure 'A/2', have been explained in reply to para 16(a) above. In view of that has been stated it is reiterated that *Shri Krishan Parshad was not the agent of the answering respondent.* It is also denied that any statement was made which was false and which the answering respondent did not believe to be true or the statement was calculated to prejudice the prospects of the petitioner's election.

It will be clear that so far as the pamphlet, Exhibit PW 18/1 "KALJUGI BHRI-GU JI KA FARMAN", is concerned, there is no allegation by the petitioner, that there is any false statement made in it against the personal conduct or character of the petitioner. The petitioner's case is that allegations were made in this pamphlet against the Jan Sangh party which was supporting him. Thus we are left only with the poster annexure A.2 (Exhibit PW 10/6). It is common ground now that the expenses for getting this poster printed have been shown in the Return of Election Expenses filed by the respondent in accordance with the provisions of section 77 of the Act. So far as the distribution of the poster, A.2 (Exhibit PW 10/6) is concerned, the matter is simplified because when the statement of PW 29 was being recorded, the learned counsel for the parties made the following statement:—

"The learned counsel for the parties have agreed that the posters already referred to regarding the Congress candidates as well as the Jan Sangh posters were pasted all over the constituency."

Thus there is no dispute now that the poster was pasted all over the constituency after its publication. The poster must have been published before the 6th February, 1967, because the bill for this poster, which has been filed with the Election Commission, is dated the 6th February, 1967 (Exhibit PW 10/10=PW 10/3). The poll was on the 19th of February, 1967; and thereafter, the poster will lose all its significance. Its effectiveness was from the date of the publication upto the date of poll. The publication was by pasting it on walls all over the constituency.

Regarding the adverse effect of the poster on the electors, PWs. 18 to 29 have been examined. So far as the respondent's witnesses are concerned, R.W. 23, Shri Balwant Singh stated that:—

"It is correct that we look down up persons who run away from the battle-field; but praise persons who die at the battle field....."

R.W. 24, Shri Som Raj Joshi, stated that:—

"I consider the Congress posters as objectionable. I believe that there should be no mud-throwing against any one. If it is said about a General that he had run away from the battle-field, whereas he had

not actually run away from the battle-field, the imputation would be improper and objectionable....."

The following part of the statement of this witness is rather instructive:—

"..... I did not ask the Comrade or Krishan Parshad Chopra that the imputation in the poster regarding the petitioner was correct or not.

Question.—Did the imputations in the poster, Exhibit PW 10/6, adversely affect the electorate so far as the petitioner is concerned?

Answer.—The general impression which the people gathered from the imputation, was that as the General had not participated in the Civil Defence matters concerning Hoshiarpur; therefore, he was not a patriot and was not helpful to the Nation.

This was also the impression of the general public.

(The witness is trying to evade direct questions put by the counsel and is hedging all the time.)

.....

Regarding the falsity of the allegations made in the poster, evidence was examined on commission. The witnesses examined on commission are—

1. Major General Kalyan Singh, LCW 1; and
2. Lieut. General M. S. Pathania, LCW 2.

Their testimony proves beyond any doubt that the allegations in the poster A.2 (Exhibit PW 10/6) are completely false; and there is no justification for the same. The petitioner (PW 52), as his own witness, has stated that:—

"I never refused any assignment during my Army career. There was never a charge against me and it has never happened that I have ever run away from the battle-field. When I retired, I was put in the reserve of regular officers till I attained the age of sixty. I was never called by the Government at any time. If ever I had been called, I would have straightaway offered my services. The question of refusal on my part does not arise. I was not called for service either in the war with China or war with Pakistan. I did not, however, volunteer my services. The only authority which can recall a reserve officer, is the Military Secretary, Army Headquarters. The Deputy Commissioner or any other Authority has no power to recall such an officer and post him. The Deputy Commissioner cannot depute an officer who goes and volunteers to him for service. I do not know what will the DC do if the services are offered to him."

I have seen the posters marked Exhibits PW 10/6 and PW 10/7 and the handbill Exhibit PW 18/1. I saw these posters pasted all over the constituency wherever I toured it. I read 'Statesman'; and a copy of the handbill was delivered to me in that paper. The statement in the poster, Exhibit PW 10/6 encircled in red pencil and marked as Exhibit PW 52/3, is incorrect and is completely false. The imputations made against me in the poster, Exhibit PW 10/7, and encircled in red pencil and marked Exhibit PW 52/4 are also false. The imputations made against me in Exhibit PW 18/1, are all false. There is no basis for the imputations in the posters or in the handbill. The allegations are false and defamatory. These allegations are an attack on my personal character and were made to lower me in the public eyes. The allegations in these posters and the handbills adversely affected my prospects of winning the election. The main reason for my defeat is the allegations in these posters.

So far as I think, the allegations made in the petition regarding corrupt practices are correct. I rely on the sources of information on the basis of which I have made those allegations.

It is in this background that the question falls for determination, whether the respondent is guilty of a corrupt practice within the meaning of section 123(4). In order to bring home the charge of this corrupt practice, the petitioner has to prove:—

1. That the impugned publication was with the consent of the candidate;
2. That if it was by an Agent or any other person, it was with the consent of the candidate or his election agent;
3. That the publication must be of a statement of fact;
4. That the statement of fact must be false and which he believes to be false and which he believed to be false or does not believe to be

true. The statement of fact must be in relation to the personal character and conduct of the candidate; and

5. The statement must be reasonably calculated to prejudice the prospects of that candidate's election.

What I have stated above has to be proved in order to get a declaration from this Court that the election of the returned candidate is void. [vide sections 123 (4) and 100(1)(d)]. Thus the question arises, have all of these ingredients been proved or not? I will now take each one of the ingredients and give my finding thereon.

Ingredient No. 1.

There is practically no dispute now that the impugned publication was at the instance of Shri Krishan Parshad Chopra, who was election incharge of the respondent and who was his trusted worker. The respondent has admitted in the witness box, that he appointed Shri Krishan Parshad Chopra as his election incharge. Therefore, there can be no manner of doubt that Shri Krishan Parshad Chopra was the agent of the respondent within the meaning of section 123(4) of the Act. The explanation to section 123 defines the expression 'agent' for the purposes of this provision. The same is reproduced below for facility of reference:

"Explanation (1):—

In this section, the expression 'agent' includes AN ELECTION AGENT, a polling agent and any person, who is held to have acted as an agent in connection with the election with the consent of the candidate."

The question whether the agent of the candidate published the impugned poster with the implied consent of the candidate will be discussed while dealing with the second ingredient because that is matter which appropriately falls under that head. So far as the first ingredient is concerned, Mr Sachar's contention is that in the present case there is no escape from the conclusion that the poster was published with the express consent of the candidate (respondent). The learned counsel strongly relies on Sections 77 and 78 of the Act and rule 86 of the Conduct of Elections Rules, 1961. The relevant portion of these provisions are set out below for facility of reference:

Section 77.—"ACCOUNT OF ELECTION EXPENSES AND MAXIMUM THEREOF.—(1) Every candidate at an election shall, either by himself or by his election agent, kept a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive."

Section 78.—"LODGING OF ACCOUNT WITH THE RETURNING OFFICER.—Every contesting candidate at an election shall . . . lodge with the District Election Officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under section 77".

Rule 86.—PARTICULARS OF ACCOUNT OF ELECTION EXPENSES —(1) The account of election expenses to be kept by a candidate or his election agent under section 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely:

- (a) the date on which the expenditure was incurred or authorised;
- (b)

On the basis of these provisions the contention of the learned counsel is that the impugned poster was published with the consent of the respondent. The expenditure in connection with the poster was either incurred by the respondent himself which will clearly imply that he consented to the publication of the poster or the expenditure was authorised by him which again clearly implies that the poster was published with his consent. The statutory provision is clear. The candidate and the election agent stand at par. Whatever the election agent does in law is taken as the doing of the candidate himself. Under section 77 the expenditure can be incurred or authorised by the candidate or his election agent. In the present case, there was no election agent appointed by the candidate. Therefore, the expenditure for the publication of the poster could either be incurred by the candidate or it could be authorised by the candidate. In either event the candidate would have full knowledge of the purpose for which the expenditure is

either incurred or authorised and he cannot take shelter behind the fact that he had no knowledge of the contents of the poster for which either he incurred the expense or he authorised the expense. It is clear from the testimony of the respondent as well as Shri Krishan Parshad Chopra that the latter was the trusted worker of the former and the former had full confidence in the latter. In this view of the matter, it is not possible to accede to the contention of Mr. Kaushal that the respondent had no knowledge of the poster. In the circumstances of this case the poster could only have been published with his authority. The respondent has categorically stated that he specifically forbade Shri Krishan Parshad Chopra from publishing any matter in which there was any attack on the personal character or conduct of any person or any matter which was false or untrue. If this was so, the poster in question which went contrary to the respondent's instructions could have been left out of the election expenses; inasmuch as, the expense for it was not authorised or incurred by the respondent. The very fact that the expense for the poster is included in the return of the election expenses clearly establishes that it was published with the consent of the respondent and that the expense for it was either incurred by the respondent or authorised by him. The legislature has been careful enough not to use the word 'ratified' instead of authorised. Authorisation precedes the incurring of expense whereas ratification is a subsequent event which validates an unauthorised expense. If this aspect of the matter is kept in the forefront, there can be no manner of doubt that in view of the provisions of section 77 read along with the provisions of section 78 and rule 86, the only conclusion possible is that the poster was published with the consent of the respondent and he cannot escape the consequence that follow from the same. I, therefore, hold that the first ingredient is fully proved.

Ingredient No. 2.

I now proceed to take up the second ingredient. Even if I am wrong in my view as regards the first ingredient, the charge under section 123(4) has been brought home to the respondent as it is established that the poster was published with the implied or tacit consent of the respondent. The respondent has denied knowledge as to the printing of the poster. He has in the pleadings tried to steer clear of it. But in the witness box he admitted that he came to know of it 5—7 days before the poll. It will be appropriate at this stage to reproduce the relevant part of his statement (R.W. 28).

"The posters Exhibits PW. 10/6 and PW. 10/7 and the pamphlet Exhibit PW. 18/1 were published by Krishan Parshad Chopra. He was my election incharge. These posters were published without their digit having been approved by me and without these having been shown to me. I know Krishan Parshad Chopra well the last 30—32 years. After the independence of the country when I contested the elections for the assembly in the years 1952, 1957 and 1962, Krishan Parshad Chopra was my election incharge and controlled my election work and when I decided to contest the Parliamentary seat in the 1967 election, I picked him up as my election incharge. I took the election office 10—15 days before I called Krishan Parshad Chopra and took him to Hoshiarpur. Krishan Parshad Chopra has a lot of election experience and is well versed in the same. On the 27th January, 1967, I called him and told him that, "I was fighting the election against very adverse circumstances and that my parliamentary constituency was very large. It has about 1600 villages and about 15 towns. I will have to undertake extensive touring and I will be away from Hoshiarpur for a considerable time and so far as the election office was concerned, he was to take charge of it and that it is entrusted to him." Regarding publicity front, I told him to keep in view three four things—that no obscene literature was to be published; that no attack was to be made on the personal character and personal conduct of a person; that nothing was to be published which was either false or untrue. The first public meeting that I addressed was on the 29th January, 1967, at Hoshiarpur. Thereafter, I was constantly on tour 5—7 days before the poll, these posters and the pamphlet came to my notice. I did not think it necessary to publish any contradiction regarding the matters contained in these posters or the pamphlet because the posters were routine posters and are normally issued during elections. After the election petition was filed against me, I had a talk with Krishan Parshad Chopra regarding the poster Exhibit P.W. 10/6. I asked him what did he mean by the phrase "Hamen Desh ke Khaddar Jarnail Ki Zarurat Nahin Jo Ke Har Larrai Ke Maidane Jang Ka Phagorra Hai." Mr. Krishan Parshad Chopra told me that after independence, two aggressions were

committed against India, one by China and the other by Pakistan and that the petitioner had not offered his services on either of these occasions. It was on the basis of this, he stated that he had written this phrase. I consider this allegation hundred percent correct. I personally knew that this allegation is correct."

The picture will not be complete without setting down the relevant part of statement of Shri Krishan Parshad Chopra, R.W. 27:-

"..... In 1967 also, I was his election Incharge when he contested for the parliamentary seat. The entire control of the office was with me .. The propaganda work was with me. The specific instructions by Comrade Ram Kishan regarding the election propaganda were:-

1. That no propaganda should be done which was against moral principles or against the law;
2. That no propaganda should be done which would injure the feelings of any person; and
3. That truth should be the basis of the propaganda. I was given the charge of the election because I had previous experience about elections.... I issued the posters, Exhibits PW 10/6 and PW 10/7 and the pamphlet Exhibit PW 18/1. I did not show these posters to Comrade Ram Kishan or took his permission for publication. Comrade Ram Kishan had no occasion to see any of the posters printed by me..... I also came to know that in 1962 attack by China on India, whereas other Generals had offered their services the petitioner had not offered his services. Similarly, in 1965, at the time of Pakistan attack, the petitioner had not offered his services. From these lapses on the part of the petitioner, I concluded that he was a person who had run away from the battle field and was a traitor to the country; and from the enquiries made by me from the people, I was convinced about this matter. Whatever I wrote in the poster, Exhibit PW 10/6, I believe to be true and published it on that basis One or two persons can tell a lie and not 10, 15 or 20 persons. I still believe that whatever I have stated in the poster, I stated correctly. For the first time, after the election, I had a talk with the Comrade one or two days before the Baisakhi (13th of April, 1967). He asked me why I had made the objected allegations in the poster. Then I told him the reason why I published the poster The entire responsibility for the Congress posters rests on me.....

Cross-Examination:

I enjoyed the full confidence of the returned candidate and he was sure that I will not do any thing which will adversely affect the prospects of his election. Comrade Ram Kishan had no complaint against my work in the earlier elections and in the present elections I asked many people including army personnel as to what was the life of the petitioner. I was told that he had not gone to any war. I do not remember the names of the military personnel who gave me the aforesaid information. I do not know from which villages of the constituency they came I did not ask any army personnel whether the General had fought with him in any battle. I did not ask any army personnel whether the General had, at any time, an opportunity to serve in a War theatre and that he had run away from the battle-field.

I never met the Deputy Commissioner, Hoshiarpur. I had no talk with the Deputy Commissioner about Major General Jai Singh. District Citizens Councils were constituted during the War days I have heard that Major General Jai Singh is a member of the Citizens Council; but he did not attend any meeting. I did not get to know of this fact from Deputy Commissioner's office; but from the general talk of the people..... I only asked Dr. Balkrishan what was the life of the petitioner. He did not say that the petitioner was a runaway General. I did not find out from the General about this allegation.

..... After printing, the posters were delivered at the election office at Hoshiarpur and from the election office, various workers took the posters and the pamphlets. These were pasted on the walls; but in the morning were found torn

I know that Army officers, who retire, and are kept in the Reserve, can be recalled by the Army at any time. I do not know whether the petitioner was a

'Reserve Officer'. I did not try to find out whether the petitioner was a 'Reserve Officer'.

These statements disclose the stand that has ultimately been taken by the respondent regarding the impugned poster. It will be appropriate also at this stage to go back to the written statement wherein the stand taken was that Shri Krishan Parshad Chopra was not the agent of the respondent, and, that the respondent was ignorant of the poster during the elections.

It is common ground that from a single act of publication, the inference, that the publication was with the consent of the respondent, will not follow. It is also now well settled that the consent has to be prior to the publication. Subsequent knowledge of the publication will not prove consent. I need only refer to the decision of the Supreme Court in *Sheopat Singh v. Harish Chandra and another*, A.I.R. 1960 Supreme Court 1217 in this connection. In my opinion, the rule laid down in the aforesaid decision fully covers the facts of the present case. I have already stated that I will proceed on the assumption that the poster was published without the consent of the respondent. The question still arises, whether there was a later publication of the same with the consent of the respondent. The respondent has admitted in the witness box that he came to know of its publication 5—7 days before the poll. He also stated that he did not take any steps to countermand it. Can the inference of consent be raised from these facts? So far as the publication of a poster is concerned, it stands on a different footing than any other single publication. The poster is generally pasted in prominent places either in public streets or public places. The object is that persons frequenting those places may go through it. There are people who would not bother to look at it. But there are equally others who do go through its contents. Therefore, each day, the poster is open to public view, there will be publication of the poster on each day. The respondent had knowledge of the poster 5—7 days before the poll. After that knowledge, no steps were taken by the respondent to countermand the allegations made in the poster. On the contrary, the respondent stated in the witness box that he considered the allegation "Haamen Desh ke Ghaddar Jarnail ki Zaroorat Nahin jo Har Larrai ke Maldanejang ka Bhagorra Hai," as hundred per cent correct. The reason for saying so given by the respondent is that after independence, two acts of aggression were committed against India—one by China and the other by Pakistan; and that the petitioner had not offered his services on either of these occasions. This assertion, far from being convincing, does not furnish any justification for the allegation made in the poster. It has come in evidence of the two witnesses examined on commission that the petitioner was on the 'Reserve List' of officers and could be recalled by the Army Headquarters. There is clear proof that he was not called by the Army Headquarters. The petitioner was also a member of the Citizens Council. A lame attempt has been made on the part of the respondent to find some sort of justification for the poster, when faced with the consequences of its publication in the election petition. In my opinion, after the respondent had knowledge of the poster, it was his duty to countermand it particularly when the allegations in it were false and of a serious nature. He could not treat the matter in a light hearted manner, particularly when he had earlier held the responsible position of the Chief Minister, Punjab. His inaction in not disassociating from the poster clearly proves his consent to it. The poster in the very nature of things was open to public scrutiny during the 5—7 days after the respondent had its knowledge. Public exhibition of such a poster would be a fresh act of publication on each such day. Mr. J. N. Kaushal, on the other hand, contended that the act of printing the poster was one act; and that act having not been repeated, there will be no question of the poster being successively published. I am unable to agree with this contention. Mere printing of a poster cannot be said to be an act of publication. It is only published if it is made public, either by distribution or by pasting on the walls, as was done in the present case. It is in the statement of Krishan Parshad Chopra that this poster was exhibited in the election office of the respondent. It is common case of the parties that all posters published during the course of elections were pasted on the walls all over the constituency. Thus I have no hesitation in holding that the exhibition of the poster, after knowledge of its publication is tantamount to consent to its subsequent publication by the respondent. Faced with this situation, an attempt was made to show that these posters were torn after they were pasted. There is no convincing evidence on this score. It cannot be held that all the posters pasted were destroyed before the respondent had knowledge of them. On these facts, in my opinion, a clear inference of consent arises, as was raised in *Sheopat Singh's* case by the Rajasthani High Court and their Lordships of the Supreme Court. The Supreme Court decision fully clinches the matter. I have, therefore, refrained from referring to

a large number of cases cited at the bar on the matter of implied or tacit consent, for each case must be determined on its own facts. The ratio of the decisions cited at the bar is that a single act of publication will not give rise to the inference of consent; and the consent must be prior to the publication. In my opinion, both these tests are satisfied in the present case. I have not the least hesitation in coming to the conclusion that on the facts and the circumstances of this case, the only conclusion possible is that the impugned poster was published with the consent of the respondent. Therefore, the second ingredient is fully established.

Before parting with this part of the judgment, I may, briefly advert to a contention raised by Mr. Rajinder Sachar, learned counsel for the petitioner, that the respondent has been shifting his stand regarding the publication of the poster and his association with Krishan Parshad Chopra; and from this fact alone, an inference does arise that the respondent had knowledge of the impugned poster and that it was published with his consent. In view of my decision on the second ingredient, it is not necessary to probe further into this matter.

Ingredient No. 3.

So far as the third ingredient is concerned, it is fully satisfied. One has merely to read the allegations in the poster; and there can be no two opinions that it contains allegations of fact.

Ingredient No. 4.

There can also be no doubt that the statement of fact made in the impugned poster related to the personal character, and conduct of the petitioner. The poster itself is the evidence of this. It is proved to the hilt that the allegations in the poster are false. Reference need only be made to the statement of the two witnesses examined by the Local Commissioner, that is Major General Kalyan Singh, LCW 1 and Leut. General M. S. Pathania, LCW 2. Moreover the petitioner has categorically stated both in the petition and in his statement as PW. 52 that the allegations made against him in the impugned poster are false. The relevant part of his statement has already been quoted at page 27 of this judgment. Faced with this situation, Mr. Jagan Nath Kaushal, the learned counsel for the petitioner, argued that the onus to prove that the allegations of fact made in the impugned poster are false and the respondent either believed them to be false or did not believe them to be true is on the petitioner. The petitioner has only discharged the onus which rested on him to a limited extent inasmuch as he has only stated that the allegations are completely false and baseless but he had not stated that the respondent believed them to be false or did not believe them to be true. In support of his contention, the learned counsel has placed strong reliance on the observations of the Supreme Court in Kumara Nand v. Brijmohan Lal Sharma (1967) 2 S.C.R. 127, which are quoted below:—

"Then we come to the question of onus. In this connection reliance is placed on Dr. Jagjit Singh v. Giani Kartar Singh, A.I.R. 1966 S.C. 773. In that case it was held that the onus to prove the essential ingredients prescribed by sub-section (4) of section 123 of the Act is on him who alleges publication of false statement of fact. The election petitioner has to prove that the impugned statement has been published by the candidate or his agent, or if by any other person, with the consent of the candidate or his election agent. He has further to show that the impugned statement of fact is false and that the candidate either believed that statement to be false or did not believe it to be true. It has further to be proved *inter alia* that the statement was in relation to the personal character or conduct of the complaining candidate. Finally, it has to be shown that the publication was reasonably calculated to prejudice the prospects of the complaining candidate's election. But though the onus is on the election petitioner to show all these things, the main things that the election petitioner has to prove are that such a publication was made of a statement of fact and that that statement is false and is with respect to the personal character or conduct of the election petitioner. The burden of proving that the candidate publishing the statement believed it to be false or did not believe it to be true though on the complaining candidate is very light and would be discharged by the complaining candidate swearing to that effect. Thereafter it would be for the candidate publishing the statement to prove otherwise. The question whether the statement was reasonably calculated to prejudice the prospects of the election of the candidate against whom it was made would generally be a matter of inference. So the main onus on an election petitioner under section 123(4) is to show that a statement

of fact was published by a candidate or his agent or by any other person with the consent of the candidate or his election agent and also to show that that statement was false and related to his personal character or conduct. Once that is proved and the complaining candidate has sworn as above indicated, the burden shifts to the candidate making the false statement of fact to show what his belief was. The further question as to prejudice to the prospects of election is generally a matter of inference to be arrived at by the tribunal on the facts and circumstances of each case.

In the present case the main onus that lay on the respondent has been discharged. He has proved that there was a publication of the nature envisaged under section 123 (4) of the Act. He has also proved that the statement of fact was made with respect to him. He has further proved that that statement was false and related to his personal character or conduct. There can be no doubt that a statement of this nature calling one candidate a thief or the greatest of all thieves is reasonably calculated to prejudice the prospects of his election. He further swore that the statement was false to the knowledge of the appellant and the latter did not believe it to be true. It was then for the appellant to show what his belief was. The burden having thus shifted we are of opinion that it was for the appellant to show either that the statement was true or that he believed it to be true. This the appellant has failed to do. The High Court therefore rightly held that the respondent had discharged the burden which lay on him".

To put shortly, the contention of the learned counsel is that the petitioner has not in his statement on oath categorically stated that the respondent believed the impugned allegations to be false or did not believe them to be true. In my opinion, their Lordships of the Supreme Court were not laying down that the onus will be discharged by the petitioner by merely repeating on oath the words of the statute. Once it is proved that the allegations are false to the hilt and there is no basis for the same the inference would be obvious that the respondent believed them to be false and did not believe them to be true. Mere parrot like repetition of the words of the statute will not in any manner improve matters. I may at this stage refer to the decision in *Anjaneya Reddy v. Gangi Reddy and others*, 21 E.L.R. 246, and to the observations of Hegde J., as he then was, at pages 277 and 279 of the report. At page 277, the learned Judge observed:—

"We now come to the question whether the statements of fact made in Exhibits P-3 and P-4 are false and were published knowing them to be false, at any rate not knowing them to be true. The burden of proving these negative facts is on the petitioner. He can do it only by placing the relevant circumstances before the court and it is for the court to draw the necessary inference from the proved facts. Ordinarily it may not be possible to prove these facts by evidence *aliunde*. The petitioner has examined himself and has denied the allegations contained in exhibits P-3 and P-4. There was opportunity for the opposite side to cross-examine him and elicit facts in support of their case. Barring some desultory cross-examination and some random suggestions indicating that the petitioner had a bad past, nothing substantial has been elicited from his evidence to show that there is any justification for the serious allegations contained in exhibits P-3 and P-4. The petitioner has fully set out his case in his election petition.

From these it is seen that the first respondent did not make bold to assert in his written statement that allegations contained in exhibits P-3 and P-4 at any rate the more serious allegations therein, are true. No evidence was adduced by the first respondent to substantiate any of these serious allegations made in exhibits P-3 and P-4. A reading of the evidence of R.Ws. 39 and 41 shows with what supreme indifference these allegations were made. They do not claim to know personally the truth of the allegations made by them. It is true that they assert that the allegations made by them are true. But no facts are disclosed in support of this assertion. They claim to have got their facts from others who have not been examined in the case. They could not have made these allegations with any sense of responsibility. The circumstances under which these allegations are made, the sweeping manner in which they are made, the serious nature of those allegations, the use to which exhibits P-3 and P-4 are put

and the total lack of any reliable evidence on behalf of the first respondent in support of these allegations leave no doubt that these allegations are false and the maker of those statements knew them to be false or at any rate could not have believed them to be true. It cannot be said that these statements are even exaggerated versions of true facts. Even the proverbial mole-hill is not there. In exhibit P-3 it is suggested that it is usual with the petitioner to suppress his opponents by violent means. Not one such incident is satisfactorily proved in this case, may there is not even material to think that there is any basis for this allegation. The story of the conspiracy to silence the propaganda of the first respondent, the allegations of the first respondent, the allegation of petitioner's disciples murdering Narayanaswami, the so called supporter of the first respondent, and the allegation about the organised and limitless wickedness of the petitioner do not appear to have a semblance of truth about them. No reasonable man, much less R.W. 39 and R.W. 41 or for that matter the first respondent all men of wordly, wisdom, could have believed them to be true."

This decision of Hedge J. was affirmed by their Lordships of the Supreme Court in *T. K. Gangi Reddy v. M. C. Anjaneya Reddy and others*, 22 E.L.R. 261, and no adverse comment was made by their Lordships on the aforesaid observations of Hedge J. in *Mohan Singh v. Bhanwarlal and others*, 1964 S.C. 1366, Shah J, who spoke for the Court while dealing with the corrupt practice under section 123(4) of the Act observed as follows:—

"The imputation is undoubtedly in relation to the personal conduct of Bhanwarlal and if the testimony of Bhanwarlal be accepted, the imputation must be held to be false. No attempt was made at the trial to prove the truth of the imputations. Even in the written statement filed by Mohan Singh it was not his plea that the imputations against Bhanwarlal were true or that he believed them to be true.

From the manner in which and the time when the leaflets annexures 'D' and 'E' were published, there can be no doubt that those leaflets were published as a part of a political campaign to injure the prospects of Bhanwarlal at the election; and if without making an enquiry about the collection of the amount of Rs. 28,000/- and the destination thereof, it was imputed against Bhanwarlal that he had defrauded the agriculturists and misappropriated the amount collected, the inference that the statement made was to the knowledge of the maker false or was not believed by him to be true, would readily be made. The imputation was on the face of it one reasonably calculated to prejudice the prospects of the candidate Bhanwarlal at the election. The High Court was, therefore, right in holding that the corrupt practice charged against the appellant Mohan Singh under section 123(4) was established.

....."

It will be apparent that the contention of Mr. Jagan Nath Kaushal, learned counsel for the respondent that there should be parrot-like repetition of the words of the statute is not borne out from the aforesaid two decisions of the Supreme Court to which I have made a reference. In my opinion, the onus, which lay on the petitioner, has been discharged in this case by him.

Ingredient No. 5.

So far as this matter is concerned, I have no doubt whatever that if the allegations, as are made in the poster against the Army General, are made, it is bound to affect the result of his election. The mind of any sane person would be adversely affected because no one looks upon with favour, so far as a traitor is concerned. Moreover, there is evidence on the file which I have already specified which proves this fact. I have no reasons to doubt this part of the evidence at any rate. In my opinion, the fifth ingredient is also proved.

In my opinion, all the ingredients of the corrupt practice under section 123(4) of the Act are made out; and this will warrant an order in favour of the petitioner for declaring the election of the respondent void under section 100(1)(b).

Contention No. III.

Before dealing with this contention, it will be proper to set out the pleadings on this part of the case. Paragraph 19(a) of the amended petition along with its reply in the written statement are quoted below.

| Allegations in the amended petition | Reply in the written statement |
|---|--|
| <p>19. That the respondent No. 1 has also committed corrupt practices of obtaining, procuring and attempting to obtain and procure assistance for the furtherance of the prospects of his election from persons in the services of the Punjab Govt. and who are Gazetted Officers and has thus committed corrupt practices as defined under sub-clause (7) of section 123. The particulars are given below :</p> <p>19(a) That with this view the respondent No. 1 obtained the list of presiding officers who were to be posted on duty in the entire constituency by using his political influence being the ex-Chief Minister as he wanted to obtain their assistance for furthering the prospects of his election, and addressed letters to them in which apart from other things he wrote as follows :</p> <p>".....As such I approach you through this letter to seek your whole hearted support and wishes."</p> <p>He also wrote that "I shall be thankful if you extend your whole hearted support and request your friends and relative also to vote enmasse in favour of Congress candidates". This letter which was written by respondent No. 1 had no other purpose but to attempt to obtain the assistance for the furtherance of his own election from persons in the service of the Government. One such letter was addressed to Shri Gurdarshan Singh, Temporary Engineer, Directorate of Construction Beas Dam, Talwara Township, who was a Presiding Officer. Copy attached as Annexure 'A/5'.</p> | <p>19. Para No. 19 of the petition is completely denied. It is submitted that the answering respondent neither obtained nor procured nor did he attempt to obtain or procure the assistance from the Government Officers as alleged. Reply to the sub-paragraphs is as under :—</p> <p>19(a) Sub-para (a) is incorrect and denied. The petitioner has obviously twisted and mis-stated the facts. It is submitted that the answering respondent was contesting a seat for the parliamentary constituency in which, it is well known there are lakhs of voters. Since it was not possible for him to personally contact all important persons in public life letters (annexure '1/5') were printed by him with the object of being posted to prominent persons in public life, e.g. lawyers, medical practitioners, Sarpanches, members of Zila & Parishad and Block Samitis, traders, municipal Commissioners and members of panchayat, Ex-servicemen etc., and were given in the office by the answering respondent with the specific instructions that these should not be posted to any Government servant. If it is found that any such letter was sent to any Government servant, the respondent feels that the same was either posted by mistake on the part of somebody unconcerned in the office against the specific direction of the answering respondent or the petitioner somehow got some such letter from his office and got it posted in order to cook up the false evidence against the answering respondent."</p> |
| <p>Reliance is placed on the last three lines of the latter, Exhibit PW 9/9. These lines are reproduced below for the sake of convenience.</p> <p>"I shall be thankful if you extend your whole-hearted support and request your friends and relatives also to vote enmasse in favour of Congress candidates."</p> | |

Only 550 copies of this letter were got printed; whereas according to the petitioner, there were 534 Returning Officers. These letters, according to the contention of the learned counsel for the petitioner, were printed for despatch to the Presiding Officers. The contention in the petition, that these letters were meant for electors like lawyers etc., is belied because the class of educated persons conversant with English and well placed is far in excess of 550 PWs 1 and 2. Sarvashri D. K. Jain and R. S. Chawla have testified to the list of Presiding Officers and it is now not disputed that these two letters, Exhibits PW 9/9 and PW 9/10 were sent to the addresses mentioned thereon. In this connection, reference may be made to the statement of Shri Krishan Parshad Chopra, R.W. 27, at page 99, wherein he stated that :—

"The letters, Exhibits PW 9/9 and PW 9/10 were issued from our election office."

This witness has not stated that these letters were spurious. So far as the addressee of Exhibit PW 9/10, is concerned, that is, Shri R. S. Khanna, he is not a Gazetted Officer. Therefore, it is not necessary to consider this letter as it does not fall within the mischief of section 123(7) of the Act. So far as Exhibit PW 9/9 is concerned, there is no serious dispute that it is addressed to a Gazetted Officer. The addressee of this letter is Shri Gurdarshan Singh, temporary Engineer, Directorate of Construction, Beas Dam, Talwara Township. The letter was not produced by Gurdarshan Singh; and if Shri Krishan Parshad Chopra had not admitted that this letter was issued from the election office of the respondent, I would not have been prepared to accept the contention of the petitioner that the letter was sent to Shri Gurdarshan Singh. The story how the letter ultimately saw the light of the day is narrated by P.W. 51, Virender Kumar. The relevant part of his statement is as follows:—

"I live at Talwara. I am an Ayurvedic Physician. I am Secretary of the Bhartiya Jan Sangh, Talwara. 9/10 days after the election, I received a letter from Kewal Krishan Bhardwaj. I was asked to find out which of the Presiding Officers had received the letters written by Comrade Ram Kishan. I investigated this matter for 5-10 days. S. Gurdarshan Singh, a temporary Engineer, came to my shop. He told me that he had received a letter from Comrade Ram Kishan. He said, his duty was in the Constituency of Ram Kishan. He told me that he had such a letter. He will search for it and then give it to me. He did not give it to me for 2-3 days. Then I went to his house after 5-6 days. His quarter is 50 karams from my shop. Then I brought the letter from his house. I have seen the letter, A-5; and that is the letter which I received from Gurdarshan Singh. 4-5 days after, I got this letter. I closed my shop and went to Hoshiarpur and gave this letter to Kewal Krishan Bhardwaj. After 5-7 days, I got a letter from Bhardwaj whether Gurdarshan Singh would be prepared to depose about this letter. I went to Gurdarshan Singh and he told me that he was not prepared to depose about it. I was asked to find out some officers who had received similar letters. Then I discovered that one Raj Kumar had received similar letter; but he told me that he had lost it. He is an Electrical SDO. I asked many people; but their duties were in Talwara Constituency.

* * * * *

P.W. 9, Charan Dass has deposed that letter, Exhibit PW 9/9, was printed by him. Shri Kewal Krishan Bhardwaj has appeared in the witness box as PW 39; and he had not said a word about letter Exhibit PW 9/9. So far as the letter Exhibit PW 9/10 is concerned, PW 11, Shri Ram Sarup Khanna has appeared in the witness box and has stated that he gave the letter, Exhibit PW 9/10, received by him to Shri Virender Kumar, PW 51. This the state of evidence on the basis of which the question, whether letter, Exhibit PW 9/9, was issued and received by Shri Gurdarshan Singh had to be determined. But in view of the clear statement of Shri Krishan Parshad Chopra, that letters, Exhibits PW 9/9 and PW 9/10, were issued from the election office of the respondent and his stand being not that these letters are forged or are not genuine or that they were never posted to the addressees, the only conclusion possible is that these letters were issued to the addressee. Talwara is not in the constituency of the respondent. Both the addressees were the Presiding Officers of the polling stations in the constituency of the respondent. The printing charges for these letters are shown in the election expenses of the respondent P.W. 9, Charan Dass, proves the bill regarding these letters. The bill is exhibit PW 9/5 and is dated the 11th February, 1967. The statement of the respondent as R.W. 28 on this matter is as follows:—

"..... The letters, exhibits PW 9/9 and PW 9/10, were drafted by me. They were meant to be issued to the leading persons of my constituency I had directed to office to send such letters to all the important electors and not to the Government servants

In cross examination, the respondent stated that:—

".....

Talwara was not in my constituency. I do not know whether Gurdarshan Singh was a voter in my Parliamentary Constituency or not. I do not know if Ram Sarup Khanna is also not a voter in the Parliamentary Constituency. I did not get any list of the Presiding Officers. No one from my election office took the list of Presiding Officers. Only candidate can get such a list. I understand that the

list of the Presiding Officers cannot be made available to any one else excepting the candidate. It is completely wrong that any body else would have obtained the list and especially Mr. Chopra on my behalf. It was not essential that if Chopra had obtained the list, he would have made a mention of it to me. I categorically stated that no such list came to my office and I know about it. The entry in Exhibit PW 1/1 regarding Gurdarshan Singh is identically copies on the letter, exhibit PW 9/9.

Question : Is the address on the letter, Exhibit PW 9/10 clipped from the copy of the voters' list and pasted on the letter?

Answer : I am not an expert.

In the letter addressed to Ram Sarup Khanna, on the address, there is something written in hand also. I do not know whether the hand-written portion is by the Post Office. Excepting the hand-written portion on Exhibit PW 9/10, my statement is the same with regard to letter Exhibit PW 9/9.

Question : I put it to you that you wrote personal letters to all the Presiding Officers because you had been occupying the office of the Chief Minister and you wanted to obtain their assistance in furtherance of your election prospects, even knowing that they were not voters?

Answer : I deny the suggestion totally. I personally wrote no letter to the Presiding Officers.

Question : I put it to you that you only got about 550 of such letters printed (exhibits PW 9/9 and PW 9/10)?

Answer : The letters in English were printed to the extent of 550 or so; but there were similar letters in Hindi, Gurumukhi and Urdu.

.....
In view of all what has been stated above, it is difficult to escape from the conclusion that these letters were sent by Shri Krishan Parshad Chopra to the addressees; and they were received by them.

What has to be determined next, is whether the letter Ext. PW 9/9, falls within the mischief of section 123(7) of the Act, Section 123(7) reads thus:—

"123. *Corrupt Practices*.—The following shall be deemed to be corrupt practices for the purposes of this Act :—

- (7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance other than the giving of vote for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely :—
 - (a) gazetted officers;
 - (b) stipendiary judges and magistrates;
 - (c) members of the armed forces of the Union;
 - (d) members of the police forces;
 - (e) excise officers;
 - (f) revenue officers other than village revenue officers known as Lambar-dars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on the amount of land revenue collected by them but who do not discharge any police functions; and
 - (g) such other class of persons in the service of the Government as may be prescribed.

Explanation.—(1) In this section, the expression 'agent' includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purpose of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.....

There can be no doubt that the letter are an attempt at obtaining assistance for the furtherance of the prospects of the candidate's election from a person in the service of the Government, who is a gazetted Officer. The only question that remains to be answered is whether these letters were sent with the consent of the candidate. On the proved facts, the conclusion is inescapable that they were sent by Krishan Parshad Chopra with the consent of the candidate. The expenses in connection with these letters are shown in the return of election expenses filed by the candidate. I have already held that where expenses for the publication of a poster are incurred by the candidate or are authorised by him, it necessarily follows that it must have been published with the consent of the candidate. It is not necessary to cover that ground all over again. I, therefore, held that the charge under section 123(7) has also been brought home to the respondent.

For the reasons recorded above, I allow this petition and declare the election of the returned candidate void under section 100(1)(b) of the Act. The petitioner will be entitled to his costs which are assessed at Rs. 750.

So far as the recriminatory petition is concerned, the respondent's counsel gave it up *vide* his statement dated 15th September, 1967. That petition is therefore dismissed. No order as to costs.

December 4, 1967.

(Sd) D. K. MAHAJAN, Judge.

[No. 82/PB/37/67.]

ORDERS

New Delhi, the 11th January 1968

S.O. 317.—Whereas the Election Commission is satisfied that Shri Om Prakash Rajgarhiya of Main Road Ranchi (Bihar), a contesting candidate for election to the House of the People from Ranchi Constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice has not given any reason or explanation for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Om Prakash Rajgarhiya to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. BR-HP/48/67(21).]

New Delhi, the 15th January 1968

S.O. 318.—Whereas the Election Commission is satisfied that Shri Krishna Kripal Satiar of P. S. English Bazar, Golapatti, P.O. and District Malda, a contesting candidate for election to the House of the People from Jangipur Constituency, has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate even after due notice has not given any reason or explanation for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Krishna Kripal Satiar to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this Order.

[No. WB-HP/7/67(4).]

By Order.

K. S RAJAGOPALAN,

COLLECTORATE OF CENTRAL EXCISE, PATNA

CENTRAL EXCISES

Patna, the 15th November 1967

S.O. 319.—In pursuance of rules 197 and 199 of the Central Excise Rules, 1944, the Collector of Central Excise Patna, hereby empowers all Central Excise Officers of and above the rank of Sub-Inspector of Central Excise in Patna Central Excise Collectorate, who are in Central Excise uniform or who possess an identity card issued to them by an officer not inferior in rank to an Assistant Collector of Central Excise to exercise within their respective jurisdiction the powers under the said rules.

2. This supersedes all previous notifications issued on the subject.

[No. 6/CX/67.]

S.O. 320.—In pursuance of rule 200 of the Central Excise Rules, 1944, the Collector of Central Excise, Patna, hereby empowers all Central Excise Officers of and above the rank of Sub-Inspector of Central Excise in Patna Central Excise Collectorate, who are in Central Excise uniform or who possess cards showing their identity, to exercise within their respective jurisdiction the powers under the said rule:

Provided that the power to search under the said rule shall be exercised by Sub-Inspectors of Central Excise only in relation to unmanufactured products.

2. This supersedes all previous notifications on the subject.

[No. 7/CX/67.]

TILAK RAJ, Collector.

MINISTRY OF INDUSTRIAL DEVELOPMENT & COMPANY AFFAIRS

(Department of Industrial Development)

New Delhi the 16th December 1967

S.O. 321.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Small Scale Industries Organisation (Assistant Accounts Officers) Recruitment Rules, 1960, namely:—

1. (1) These rules may be called the Small Scale Industries Organisation (Assistant Accounts Officers) Recruitment Amendment Rules, 1967

(2) They shall come into force on the date of their publication in the Official Gazette

2. In the Schedule to the Small Scale Industries Organisation (Assistant Accounts Officers) Recruitment Rules, 1960, for the entries in columns 10 and 11, the following shall be substituted, namely:—

"By transfer/deputation of suitable Assistant Accounts Officers, failing which S.A.S. Accountant with five years service in the grade fix any of the organised Accounts Departments, namely, Indian Audit and Accounts Department or Indian Defence Accounts Department or Indian Railways Accounts Department. (Period of deputation – ordinarily not exceeding three years)".

[No. 13 31 67-E I]

R. NATARAJAN, Under Secy.

ग्रीष्मोगिक विकास तथा समवाय-कार्य मंत्रालय

(ग्रीष्मोगिक विकास विभाग)

नई दिल्ली, 16 दिसम्बर 1967

एस० ओ० 322 — संविधान के अनुच्छेद 309 के परन्तु कदारा प्रदत्त शक्तियों का प्रयोग करते हुए राष्ट्रपति एतद्वारा लघु उद्योग संगठन (सहायक लेखा अधिकारी) भर्ती नियम, 1960, में और आगे सशोधन करने के लिये निम्नलिखित नियम दत्ताने हैं; अर्थात् :—

(1) 1. इन नियमों को लघु उद्योग संगठन (सहायक लेखा अधिकारी) भर्ती संशोधन नियम, 1967 कहा जायेगा।

2. ये सरकारी राजपत्र में प्रकाशित होने की तारीख से लागू होंगे।

(2) लघु उद्योग संगठन (सहायक लेखा अधिकारी) भर्ती नियम, 1960 की अनुसूची में कालम 10 तथा 11 में दी गई प्रतिष्ठितों के स्थान पर निम्नलिखित लेखा जायें, अर्थात् :—

“उपर्युक्त सहायक लेखा अधिकारी के स्थानान्तरण/प्रतिनियुक्ति द्वारा, और ऐसा न होने पर किसी भी अन्य संगठित लेखा विभागों अर्थात् भारतीय लेखा-परीक्षा तथा लेखा विभाग या भारतीय रक्षा लेखा विभाग अथवा भारतीय रेलवे लेखा विभाग आदि से अधीनस्थ लेखा सेवा (एस० ए० एस०) लेखाकारों के द्वारा जिन्हें इस घेड़ में सेवा करते पाच वर्ष हो गये हों, की प्रतिनियुक्ति के द्वारा। (प्रतिनियुक्ति की अवधि सामान्यतः 3 वर्ष से अधिक नहीं होगी।)”

[स० 13/31/67-ई० 1]

आर० नटराजन, अवर मंत्री।

(Department of Industrial Development)

ORDER

New Delhi, the 12th January 1968

S.O. 323/IDRA/18G/67.—In exercise of the powers conferred by section 18G and section 25 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and all other powers enabling it in that behalf, the Central Government hereby makes the following Order further to amend the Cement Control Order, 1967, namely:—

1. This Order may be called the Cement Control (Amendment) Order, 1968.
2. In the Cement Control Order, 1967—
 - (i) in sub-clause (a) of clause 2,—
 - (a) the words “oil well cement, water-proof (Hydrophobic) cement” shall be omitted;
 - (b) after the words “but does not include”, the words “oil well cement, water-proof (Hydrophobic) cement and” shall be inserted;
 - (ii) for sub-clause (1) of clause 9, the following sub-clause shall be substituted, namely,—
 - (1) Every producer shall, in respect of each transaction by way of sale of cement effected by him, pay within one month of the close of the month in which sales take place, to the Controller, an amount equivalent to the amount, if any, by which the free on rail destination price of such cement exceeds the aggregate of the following amounts, namely:—”;

- (iii) in sub-clause (2) of clause 10,—
 (a) for item (iv), the following item shall be substituted, namely:—
 “(iv) stockist's margin of profit;”;
 (b) after item (v), the following item shall be inserted, namely:—
 “(vi) additional road transport charges, where allowed.”;
 (iv) in sub-clause (1) of clause 11, for the words “be granted by the Central Government”, the words “grant from time to time” shall be substituted;

(v) in the Schedule,—

- (a) in item 7, for the entry

Dwarka Works

| | |
|-------|---|
| 90·50 | upto an annual production of 245,000 tonnes. |
| 96·00 | for every tonne beyond 245,000 tonnes per annum.” |

the following entry shall be substituted, namely:—

“Dwarka Works

| | |
|-------|--|
| 90·50 | upto an annual production of 239,000 tonnes. |
| 96·00 | for every tonne beyond 239,000 tonnes per annum.”. |

- (b) in the sentence occurring at the end, for the expression “an additional price of Rs. 7 and Rs. 10 per metric tonne”, the expression “an additional price of Rs. 10 per metric tonne” shall be substituted.

[No. F. 1-32/67-Cem.Vol.II.]

K. I. VIDYASAGAR, Jt. Secy.

(प्रौद्योगिक विकास विभाग)

आवेदन

नई दिल्ली 12 जनवरी, 1968

एस० ओ० ३२४-आई०ड० आर० ए० १८ जो/६७-उच्चोग (विकास तथा विनियमन) अधिनियम, 1951 (1951 का 65) की धारा 18 छ और धारा 25 द्वारा प्रदत्त शक्तियों तथा इस सम्बन्ध में उसे समर्थ बनाने वाली अन्य सभी शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा सीमेंट नियन्त्रण आदेश, 1967 में और आगे संशोधन करने के लिये निम्नलिखित आदेश जारी करती है, अर्थात्:—

1. इस आदेश को सीमेंट नियन्त्रण (संशोधन) आदेश, 1968 कहा जायगा।

2. सीमेंट नियन्त्रण आदेश, 1967 में—

(1) खण्ड 2 के उप-खण्ड (क) में,—

(क) आयल बेल सीमेंट, जल-रोधक (हाइड्रोफोबिक) सीमेंट शब्द हटा दिये जायगे;

(ख) “किन्तु इसमें” शब्दों के पश्चात् “आयल बेल सीमेंट, जल-रोधक (हाइड्रो-फोबिक) सीमेंट तथा” शब्द निविष्ट कर दिये जायगे;

(2) खण्ड 9 के उप-खण्ड (1) के स्थान पर निम्नलिखित उप-खण्ड रखा जाये, अर्थात्—

“(1) प्रत्येक निर्माता को उसके द्वारा सीमेंट की बिक्री के सम्बन्ध में किये गये हुए एक सौदे के बारे में जिस मास उसका विक्रय किया गया हो उसके समाप्त होने के एक महीने के अन्दर उस अधिक राशि, यदि कोई हो, का भुगतान,

नियन्त्रक को करना होगा जो निम्नलिखित राशि के रेल गतव्यस्थान तक
निःशुल्क ले जाने के मूल्य से अधिक निकले, अर्थात्:—

(3) खण्ड 10 के उप-खण्ड (2) में,—

(क) मद संख्या (4) के स्थान पर निम्नलिखित मद रखी जायगी, अर्थात्:—

“(4) स्टाफिस्ट का लाभ”;

(ख) मद संख्या (5) के पश्चात् निम्नलिखित मद रखी जायेगी, अर्थात्:—

“(6) अतिरिक्त सङ्केत परिवहन प्रभार, जहां अनुमति दी गई हो”;

(4) खण्ड 11 के उप-खण्ड (1) में—

“केन्द्रीय भरकार द्वारा स्वीकृति दी जायगी” नामक शब्दों के स्थान पर “समेत-समेत
पर स्वीकृति” शब्द रखे जायगे;

(5) तालिका में—

(क) मद संख्या (7) में इस प्रविष्टि के स्थान पर—

| | | | | | |
|-----------------|-------|---------|-----|----|---|
| “द्वारका वर्क्स | 90.50 | 245,000 | मी० | टन | के वार्षिक उत्पादन तक। |
| | 96.00 | 245,000 | मी० | टन | वार्षिक से अधिक पर प्रत्येक मी० टन के लिये । |

निम्नलिखित प्रविष्टि रखी जायगी, अर्थात्:—

| | | | | | |
|---------------------------|-------|---------|-----|----|--|
| “द्वारका वर्क्स | 90.50 | 239,000 | मी० | टन | वार्षिक उत्पादन तक। |
| | 96.00 | 239,000 | मी० | टन | वार्षिक से अधिक पर प्रत्येक मी० टन के लिये ।” |

(ख) ग्रन्तिम बाक्य में “7 रु० तथा 10 रु० प्रति मी० टन का अतिरिक्त मूल्य”
नामक शब्दों के स्थान पर “10 रु० प्रति मीट्रिक टन अतिरिक्त मूल्य” शब्द
रखे जायंगे।

[सं० 1-32/67-सीमेट खण्ड 2.]

के० श्राई० विद्यासागर संयुक्त सचिव ।

(Indian Standards Institution)

New Delhi, the 15th January 1968

S.O. 325.—In pursuance of sub-rule (1) of rule 4 of the Indian Standards Institution (Certification Marks) Rules, 1955 the Indian Standards Institution hereby notifies that the Standard Mark, design of which together with the verbal description of the design and the title of the relevant Indian Standard is given in the Schedule hereto annexed, has been specified.

This Standard Mark for the purpose of the Indian Standards Institution (Certification Marks) Act, 1952 and the Rules and Regulations framed thereunder, shall come into force with effect from 1 January, 1968.

THE SCHEDULE

| Sl. No. | Design of the Standard Mark | Product/Class of Product | No. and Title of the Relevant Indian Standard | Verbal description of the Design of the Standard Mark |
|------------|--------------------------------|--|---|--|
| (1) | (2) | (3) | (4) | (5) |
| | [IS:2208] | HRC cartridge fuse-links up to 650 volts | IS:2208-1962 Specification for HRC cartridge fuse-links up to 650 volts | The monogram of the Indian Standards Institution consisting of letters 'ISI' drawn in the exact style and relative proportions as indicated in col (2), the number designation of the Indian Standard being superscribed on the top side of the monogram as indicated in the design. |

[No. MD/17/2]

S.O. 326.—In pursuance of sub-regulation (3) of regulation 7 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that the marking fee per unit for HRC cartridge fuse-links up to 650 volts, details of which are given in the Schedule hereto annexed has been determined and the fee shall come into force with effect from 1 January 1968 :

THE SCHEDULE

| Sl. No. | Product/Class of Products | No. and Title of Rele- vant Indian Standard | Unit | Marking Fee per Unit |
|------------|--|--|------------------|--|
| (1) | (2) | (3) | (4) | (5) |
| 1 | HRC cartridge fuse-links up to 650 volts | IS:2208-1962 Speci- fication for HRC cartridge fuse-links up to 650 volts | One Fuse link | (a) 1 Paisa per unit of rated current from 2 amps to 100 amps, including 100 amps, up to a production of 2 lakhs units; 0.5 Paisa per unit for the remaining units ; (b) 5 Paisa per unit of rated current of more than 100 amps but up to 320 amps, including 320 amps, up to a production of one lakh units ; 2.5 Paisa per unit for the remaining units ; (c) 10 Paisa per unit of rated current of more than 320 amps up to a production of 7500 units ; 5 Paisa per unit for the remaining units . |

[No. MD/18/2]

(Dr.) SAD GOPAL,
Deputy Director General

MINISTRY OF FOOD, AGRICULTURE, COMMUNITY DEVELOPMENT AND CO-OPERATION

(Department of Agriculture)

New Delhi the 3rd April 1967

S.O. 327.—In exercise of the powers conferred by Sub-rule (2) of Rule 9, Clause (b) of sub-rule (2) of rule 12 and sub-rule (7) of rule 24, read with rule 34, of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, the President hereby makes the following amendments in the Schedule to the notification of the Government of India in the late Ministry of Agriculture No. S.R.O. 634-A dated the 28th February, 1957, namely :—

(1) In the said Schedule,

(i) in Part I, General Central Services, Class III, for the entries under the heading "Exploratory Tubewells Organisation", in columns 2 and 3, against the entry "All posts having a scale of pay, the maximum of which does not exceed Rs. 300/-" in column 1, the following entries shall be substituted, namely :—

2

3

- | | |
|---|--|
| (i) Superintending Engineer in regard to the posts other than those under United Nations Development Programme (Special Fund) Project ; | (i), Superintending Engineer, in regard to the Posts other than those under United Nations Development Programme (Special Fund) Project ; |
| (ii) Director, United Nations Development Programme (Special Fund) Project, in regard to the Posts under United Nations Development Programme (Special Fund) Project. | (ii) Director, United Nations Development Programme (Special Fund) Project in regard to the posts under United Nations Development Programme (Special Fund) Project. |

(ii) in part II, General Central Service, Class IV, for the entries under the heading "Exploratory Tubewells Organisation", in Columns 2 and 3, against the entry "All posts" in Column 1, the following entries shall be substituted, namely :—

2

3

- | | |
|--|--|
| (i) Superintending Engineer in regard to posts other than those under United Nations Development Programme (Special Fund) Project ; | (i) Superintending Engineer in regard to the posts other than those under United Nations Development Programme (Special Fund) Project ; |
| (ii) Director, United Nations Development Programme (Special Fund) Project in regard to posts under United Nations Development Programme (Special Fund) Project. | (ii) Director, United Nations Development Programme (Special Fund) Project in regard to posts under United Nations Development Programme (Special Fund) Project. |

[No. 7-9/66-TW]
DINA NATH, UNDER SECY.

MINISTRY OF STEEL, MINES & METALS

(Department of Mines & Metals)

New Delhi, the 11th January 1968

S.O. 328.—In exercise of the powers conferred by sub-section (2) of section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952) the Central Government hereby appoints Shri K. K. Ray, Coal Controller, Calcutta, as the Chairman of the Coal Board and directs that the following amendment shall

be made in the notification of the Government of India in the Ministry of Steel, Mines and Metals (Department of Mines and Metals) No. S.O. 3435 dated the 21st September, 1967, namely:—

In the said notification, for item 1 and the entries relating thereto, the following shall be substituted, namely:—

"1. Shri K. K. Ray, Coal Controller.—Chairman".

[No. C5-4(4)/67.]

K. SUBRAHMANYAN, Under Secy.

(Department of Mines & Metals)

New Delhi, the 16th January 1968

S.O. 329.—In exercise of the powers conferred by sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) and of all other powers enabling it in this behalf, the Central Government hereby rescinds the notification of the Government of India in the Ministry of Mines and Metals No. S.O. 1770 dated 4th June, 1966.

[No. C2-21(3)/63.]

S.O. 330.—In exercise of the powers conferred by sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) and of all other powers enabling it in this behalf, the Central Government hereby rescinds the notification of the Government of India in the Ministry of Mines and Metals No. S.O. 3471 dated the 8th November, 1966.

[No. C2-22(18)/63.]

M. S. K. RAMASWAMI, Dy. Secy.

MINISTRY OF HEALTH, FAMILY PLANNING & URBAN DEVELOPMENT

(Department of Health)

New Delhi, the 16th January 1968

S.O. 331.—The following draft of rules further to amend the Drugs and Cosmetics Rules, 1945, which the Central Government proposes to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 6(2), 12 and 33 of the Drugs and Cosmetics Act, 1940 (23 of 1940), is published, as required by the said sections for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 31st March, 1968.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government.

Draft Rules.

1. These rules may be called the Drugs and Cosmetics (Amendment) Rules, 1967.

2. In the Drugs and Cosmetics Rules (1945) in rule 65, after sub-rule (3), the following rule shall be inserted:—

"3A.—Any drug supplied on demand or against a prescription shall comply with the description of the drug as mentioned in the demand or prescription and accordingly no drug—

- (i) which is not of the nature, substance, composition or quality; or
- (ii) which is not manufactured by the manufacturer,

mentioned in the demand or prescription, shall be supplied against such demand or on such prescription.

[No. F. 1-20/67-D.]

AMAR NATH VARMA, Under Secy.

DEPARTMENT OF COMMUNICATIONS

(P. & T. Board)

New Delhi, the 15th January 1968

S.O. 332.—In pursuance of para (a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627 dated 8th March, 1960, the Director-General Posts and Telegraphs, hereby specifies the 16th February, 1968, as the date on which the Measured Rate System will be introduced in Chanda Telephone Exchange.

[No. 5/1/68-PHB.]

D. R. BAHL,
Assistant Director General (PHB).

संचार विभाग

(इकात्तर-बोर्ड)

नई दिल्ली, 15 जनवरी 1968

एस० ओ० 333.—प्रधार्ष आदेश क्रमसंख्या 627, दिनांक 8 मार्च 1960 द्वारा लागू किए गए 1951 के भारतीय तार नियमों के नियम 434 के खण्ड III के पंरा (क) के अनुसार डाक-नार महानिदेशक ने चन्दा टेलीफोन केन्द्र में 16-2-68 से प्रमापित दर प्रणाली लागू करने का निश्चय किया है।

[स० 5-1/68 पी० एच० बी०]

दी० ओ० बहल,
ग्राहायक महा निदेशक (पी० एच० बी०)।

DELHI DEVELOPMENT AUTHORITY

New Delhi, the 15th January 1968

S.O. 334.—In pursuance of the provisions of sub-section (4) of Section 22 of the Delhi Development Act, 1957, the Delhi Development Authority has replaced at the disposal of the Central Government of the land described in the schedule below for placing it at the disposal of the Land and Development Officer, Ministry of Works, Housing and Supply, Government of India, New Delhi w.e.f. 30th December, 1966, for further transfer to Jawahar Lal and Makhan Lal Charitable Trust for Dharam Shala.

SCHEDULE

Price of land measuring 312.62 sq. yds bearing khasra No. 103/20 min situated in Darya Ganj North Estate.

The above piece of land is bounded as follows:—

NORTH: Khasra No. 19.

SOUTH: Road.

EAST: Road.

WEST: Khasra No. 103/20 min.

[No. S3(2)66]

M. L. MONGIA, Secy.
Delhi Development Authority.

MINISTRY OF LABOUR, EMPLOYMENT & REHABILITATION

(Department of Labour & Employment)

New Delhi, the 15th January, 1968

S.O.—335—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between employers in relation to the Orient Colliery of Messrs Central India Coalfields Limited, Post Office Brajrajnagar District Sambalpur and their workmen, which was received by the Central Government on the 8th January, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE NO. 53 OF 1967

PARTIES:

Employers in relation to the Orient Colliery,

AND

Their workmen.

PRESENT:

Shri S. K. Sen—Presiding Officer.

APPEARANCES:

On behalf of Employers.—Shri K. P. Mukherjee, Bar-at-Law.

On behalf of Workmen.—Shri Sheomurt, One of the concerned workmen.

STATE: Orissa.

INDUSTRY: Coal Mines

AWARD

By Order No 6/27/67-LRII dated 4th July, 1967 the Central Government referred for adjudication an industrial dispute between the employers in relation to the Orient Colliery of Messrs Central India Coal Fields Limited, Post Office Brajrajnagar, District Sambalpur and their workmen in respect of the matters specified in the following schedule:

"Whether the management of Orient Colliery of Messrs Central India Coal-fields Limited was justified in asking Sarvashri Bhagwati, Dhrub Singh, Raniman, Sheomurt and Haddish, Pump and Haulage Khalasis to do the work of trammers while retaining their juniors on the job of pump and haulage khalasi? If not, to what relief are the said workmen entitled?"

2. According to the case of the union, Sambalpur Coal Mines Shramik Congress, Sheomurt and Haddish both haulage khalasis were stopped from work from 2nd November, 1966 and when they saw the manager, the manager asked them to tender their resignations saying that if they did so, they would be provided with new employment in the colliery. The workmen however refused to tender resignation and reported to their union and the union's Secretary sent a complaint to the A.L.C., Central Jharsaguda Ramman, Pump Khalasi was stopped from work from 3rd November 1966 and when he saw the manager, he was asked to tender resignation and take a new appointment. The workman refused to tender resignation and informed the Secretary of the Shramik Congress and his case was also brought to the attention of the A.L.C., Central, Jharsaguda by the Secretary of the union. Dhrub Singh and Bhagwati, Pump Khalasis, were stopped from work from 3rd November 1966 and 1st November 1966 respectively. They complained to their union and the Shramik Congress raised a dispute before the A.L.C. Central, Jharsaguda. By a letter dated 19th November 1966, the manager directed each of these 5 workmen to report for duty as underground trammers; the workmen failed to do so, and on 24th November 1966 the General Secretary of the Shramik Congress addressed another letter to the A.L.C., Central, Jharsaguda that the proposed change of the nature of their job from haulage khalasi or pump khalasi to trammer was not acceptable as men junior to the 5 workmen were still working as haulage khalasi or pump khalasi. There was no settlement before the Conciliation officer. As the schedule quoted above shows, the only question that has been referred for adjudication is whether

the management was justified in asking the 5 workmen to do the work of trammers while retaining the juniors as pump or haulage khalasis.

3. According to the written statement of the union the reference is defective because the main complaint of the workmen is that they were stopped from work from the 1st or 2nd or 3rd November, 1966 without written order or proceeding, and the offer of the alternative work as trammer was made by the management only after the dispute over stopping the workmen from work had already been raised before the A.L.C., Central, Jharsaguda I must agree that there is some substance in this contention of the union. It appears from Ext. F, a letter dated 2nd November 1966 from the A.L.C., Jharsaguda to the Manager, Orient Colliery that the Jt. Secretary of the Sambalpore Coal Miners Shramik Congress had raised a dispute about the refusal of work to Bhagwati from 1st November 1966 and some other workmen and the A.I.C. was writing to the manager that he would hold a joint discussion in connection with the matter on 5th November 1966 at 4 P.M. in the office of the manager of the colliery. Ext. F1 is a letter dated 5th November 1966 from the A.L.C., Jharsaguda to the Manager regarding the complaint of stoppage of work of Sheomurt and Haddish, haulage khalasis by the management with effect from 2nd November 1966. The manager was asked to furnish comments about the complaint of the union. Ext. F2 also dated 5th November 1966 is from the A.L.C. to the manager forwarding a copy of the union's complaint relating to refusal of work to Ramman from 3rd November 1966 and asking for the manager's comment. Ext. G shows that the Jt. Secretary of the Shramik Congress complained about Dhrub Singh, Pump Khalasi being stopped from work from 2nd November 1966. This letter is dated 7th November 1966 and the management got a copy on 9th November 1966. It was not until 19th November 1966 that the management wrote letters Ext. B, B1, C, C1 and C2 to the 5 workmen alleging that they had been absenting themselves from work and stating that they were surplus to requirement, and stating that because of the hard time the management was willing to offer alternative work and asking them to report forthwith for work as underground trammers. It does not appear that the management wrote to the A.L.C., Jharsaguda before 19th November 1966 that these 5 workmen had been absenting themselves voluntarily and had not been stopped from work. On the other hand, from the prompt complaint made by the union to the A.L.C. that these men had been stopped from work, it would appear that the contention of the workmen and the union is correct and that the contention of the management that the workmen had been voluntarily absenting themselves is not correct. The reference however does not refer for decision the question whether the workmen had been stopped from work improperly.

4. As regards the offer for work as underground trammers which was made in the letter dated 19th November 1966, I think that the workmen ought to have accepted the offer and then raised a dispute about the pay for the intervening days for which they had been stopped from work. From the evidence of the manager it appears that because of the exhaustion of one coal seam, one haulage system had to be closed down and a pump had to be stopped and dismantled and these workmen who were attached to the haulage system and the pump of that coal seam necessarily could not be kept employed in their old posts. Three of the workmen have deposed before the tribunal namely, Svs. Sheomurt, Ramman and Bhagwati. They have said that if the offer for the work as trammer had been made when they were stopped from work and before their complaint through the union to the Conciliation Officer, they would have accepted the offer, but they did not accept the offer as the offer had been made after 17 days or more. At that time, apparently because the haulage system and the pump where they had been engaged would not resume working, and reposing on a permanent basis was necessary, the workmen raised the question that as some workmen junior to them in service were still working as haulage khalasis or pump khalasis in other inclines and other coal seams, the juniormost workmen should be transferred as trammers and that the workmen concerned in the dispute should be posted as haulage khalasis or pump khalasis in the other inclines. I do not however think that this claim is justified; while about retrenchment there is provision of law that the juniormost workman of the same category must be selected for the purpose, as regards the transfer to other suitable job there is no such legal provision. The work as a trammer is not more difficult than the work as pump khalasi or haulage khalasi. Moreover, by the transfer as underground trammers the workmen would not suffer any loss of earning. Therefore, I must make the award that the management of the Orient Colliery cannot be held to have been unjustified in asking Svs. Bhagwati, Dhrub Singh, Ramman, Sheomurt and Haddish, Pump and Haulage Khalasis to do the work as underground trammers while some of their juniors might be doing pump and haulage khalasi's work

at the colliery in other inclines. The management however was not justified in stopping these workmen from work from 1st or 2nd or 3rd November, 1966 and in not offering any alternative work until 19th November 1966 but as that question has not been referred to my adjudication, I cannot make any effective award on that point.

Dated,

5th January, 1968.

(Sd.) S. K. SEN,
Presiding Officer.
[No. 6/27/67-LRII]

S.O. 336.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Kajora and West Kajora Colliery, Post Office Kajoragram, District Burdwan and their workmen, which was received by the Central Government on the 8th January, 1968

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE NO. 20 OF 1967

PARTIES:

Employers in relation to the Kajora & West Kajora Colliery,
AND

Their workmen.

PRESENT:

Shri S. K. Sen—Presiding Officer.

APPEARANCES:

On behalf of Employers.—Shri M. M. Saha, Advocate.

On behalf of Workmen.—Shri B. Mukhandey, Bar-at-Law, an Office bearer of Colliery Mazdoor Sabha.

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

By Order No. 6/14/67-LRII dated 24th February 1967, the Central Government referred for adjudication an industrial dispute between the employers in relation to the Kajora and West Kajora Colliery, P.O. Kajoragram, Dist. Burdwan and their workmen in respect of the matter mentioned in the following schedule:

"Whether the stoppage from work of Dr. S. N. Dey Choudhury, Medical Officer with effect from the 1st December, 1966 and that of Shri Gurupada Choudhury, employee, from the 23rd November, 1966 by the management of Kajora and West Kajora Colliery, Post Office Kajoragram, Dist. Burdwan was justified? If not, to what relief are the employees entitled?"

2. Regarding Shri Gurupada Choudhury mentioned in the above Schedule, he has not appeared before the tribunal and the union at the time of hearing stated that it was not pressing the case of Shri Gurupada Choudhury, but only that of Dr. S. N. Dey Choudhury, the Medical Officer. It must, therefore, be found that there is no dispute regarding the dismissal or stoppage of work of Shri Gurupada Choudhury with effect from 23rd November 1966.

3. As regards Doctor S. N. Dey Choudhury, the case of the union, the Colliery Mazdoor Sabha, is that the management was systematically allowing the wages to fall into arrears, particularly the wages of the office staff including the Medical officer, and therefore on the 5th October, 1966 some members of the office staff including the Medical officer waited in deputation on the Manager Shri M. L. Goel and pressed for payment of arrear wages of July, August and September, 1966 and the second quarterly bonus of 1966. The management according to the union was trying to get rid of the medical officer, Sri S. N. Dey Choudhury, and without serving him with any chargesheet and holding any enquiry the management suddenly dismissed the medical officer alleging that on 5th October, 1966 he had joined in wrongfully restraining the manager from carrying out his duties and criminally intimidating him. Other members of the staff who had joined the medical officer in waiting on deputation on the manager were not punished

in any way. According to the union therefore the dismissal of the medical officer was not only illegal but amounted to victimisation and involved discrimination and unfair labour practice.

4. According to the management, the Colliery Mazdoor Sabha was not entitled to raise the dispute, as a substantial number of workmen were not members of the union and had no espoused the cause of the medical officer in connection with his dismissal. Further, according to the management, the reference was not maintainable because the medical officer is not a workman within the meaning of the Industrial Disputes Act. On the merits, the management stated that it was not a case of waiting on the manager in a peaceful deputation and claiming arrears of wages, but that the medical officer along with others had made a 'gherao' of the manager and kept him confined in his bungalow for about 24 hours and had abused him in filthy language. Shri S. N. Dey Choudhury is a close relative of the proprietor of the colliery, and his education expenses were borne by the proprietor, Shri K. C. Pal Choudhury and he was given an appointment at the colliery as medical officer when he could not earn his living by independent medical practice. In the circumstances, according to the management, the medical officer had no justification in joining other workmen in thus criminally intimidating the manager and keeping him confined for a long time, and in view of his taking a leading part in such criminal intimidation and confinement, the dismissal of the medical officer was legal and justified.

5. Shri M. L. Goel who was manager at the relevant time at the colliery has not come to depose as a witness. The only witness examined on behalf of the management is Sri P. K. Banerjee, Mining Sirdar who himself took part along with the medical officer and others, 20 or 25 in all, in waiting in a deputation on the manager on 5th October 1966. He said in his evidence that the manager was not allowed to proceed to his office from his bungalow which is quite close to the office, but after about 20 minutes conversation on the road between the manager's bungalow and the colliery office the manager was asked to go back to his bungalow and was kept confined there from 11 O'clock until the evening and Shri Banerjee also was in that party. Since Shri Banerjee on his own evidence participated in the wrongful confinement or wrongful restraint of the manager, his evidence must be considered tainted evidence and not independent evidence. It would therefore be difficult to accept his testimony without some independent corroboration. As to the constitution of a branch of the Colliery Mazdoor Sabha at the colliery, Shri Banerjee's evidence is that it was formed in December, 1966 after the medical officer had been dismissed with effect from 1st December 1966 by a letter dated 29th November 1966. According to the evidence Dr. S. N. Dey Choudhury, a branch of the Colliery Mazdoor Sabha was formed at the colliery in August, 1966 i.e. 3 or 4 months before he was dismissed, and he became a member of the Colliery Mazdoor Sabha at that time and paid his subscription and obtained a receipt, Ext. 9, dated 17th August 1966. Another witness examined for union is Sri Mani Bhushan Bose, an employee of Jambad Colliery who stated that he had represented the branch of the Colliery Mazdoor Sabha of Kajora and West Kajora Colliery in some disputes before the A.T.C., Raniganj, and he produced memorandums of settlement which were signed before the A.L.C., Raniganj. These memorandums are Exts. 5, 5A and 5B. Ext. 5 & 5A are both dated 27th December 1966. They bear the signature of Moni Bhushan Bose as representing the workmen as an Assistant Secretary of the Colliery Mazdoor Sabha of Raniganj. Ext. 5 shows that there was settlement between the management and the union regarding a number of workmen who were taken back in service the period of non-employment being treated as leave without pay, but there was no agreement as regards Dr. S. N. Dey Choudhury and Shri Gurupada Choudhury, as in respect of them the management stood by the order of dismissal. Ext. 5A shows that the Colliery Mazdoor Sabha had also taken up the case of some miners who had been stopped from work from 29th October, 1966. This indicates that the branch of the Colliery Mazdoor Sabha had been formed at the Kajora and West Kajora Colliery before December, 1966. Shri Moni Bhushan Bose stated that the total number of workmen at the colliery is approximately 250 and of them about 150 had become members of the Colliery Mazdoor Sabha. I find therefore that the evidence of Dr. S. N. Dey Choudhury that a branch of the Colliery Mazdoor Sabha was formed at the colliery in August, 1966 is worthy of credit and should be accepted. The union took up the case of Dr. Dey Choudhury as is shown by the memorandum of settlement, Ext. 5 to which reference has already been made, and by a letter written by the Vice-President of the union, Sri Robin Chatterjee to the A.L.C., Central, Raniganj on 2nd December 1966, marked Ext. 5, regarding Shri S. N. Dey Choudhury's dismissal.

6. As to the point whether a medical officer is a workman, Shri M. M. Saha appearing for the management has relied on a decision of the Supreme Court, 1958 I LLJ 500 (Workmen of Dimakuchi Tea Estate v. Management) in which the Supreme Court proceeded on the basis of the concession by both the parties that a doctor did not come within the definition of the term 'workman' in the Industrial Disputes Act; but since then the definition of the term 'workman' in the Industrial Disputes Act has been substantially amended. This was pointed out by the Assam High Court in the case, 1962 II LLJ 37 (Bengal United Tea Company Ltd. and Ram Labhayya). The Assam High Court with reference to the amended definition of the term 'workman' in the Industrial Disputes Act held that a medical officer is a technical worker and therefore comes within the definition of the term 'workman' in Sec. 2(s) of the Industrial Disputes Act. The previous definition of the term 'workman' was, "Any person employed including an apprentice in any industry to do any skilled or unskilled manual or clerical work for hire or reward.....". The amended definition is, "Any person including an apprentice employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward.....". A supervisor drawing over Rs. 500/- per month is not a workman, being specifically excluded by an exclusion clause. This aspect of the definition came up for consideration in connection with the duties of a medical officer in a case before the Madras High Court, 1964 II LLJ 164 (Murugalli Estate and Industrial Tribunal, Madras). The medical officer was in charge of a central hospital and was drawing more than Rs. 500/- per month and his duties had been specified as (1) management and running of a central hospital of Murugalli Estate, (2) supervision of the work of the hospital staff; (3) supervision of the dispensaries; (4) inspection of lines and quarters; (5) malaria control work and (6) supervision of creches. The Industrial Tribunal held that the medical officer in view of the amended definition of the term 'workman' was a workman, but the Madras High Court set aside the decision and sent back the case for reconsideration after taking evidence on the point whether the main duties of the medical officer of the central hospital were supervision or medical treatment i.e whether the work as a supervisor or as a technician was the main duty for which he had been appointed. In the present case Dr. Dey Choudhury is by no means a supervisor. The uncontradicted evidence is that at the dispensary of the colliery there is no compounder and no dresser and he has to do the work of the compounder and the dresser as well as attend to sick workmen. He was appointed 11 years back on the monthly pay of Rs. 133.50 and his pay when he was dismissed was Rs. 315.25 after deduction of Provident fund. I must therefore hold that Dr. Dev Choudhury is a workman as defined under Sec. 2(s) of the Industrial Disputes Act. The preliminary objections are therefore over-ruled.

7. Admittedly there was no chargesheet served on Dr. Dey Choudhury and there was no domestic enquiry before his dismissal. Shri M. M. Saha has referred to certain Supreme Court decisions, e.g. AIR 1963 SC 295 (Ritz Theatre Pvt. Ltd. and its workmen), and 1965 II LLG 182 (Workmen of Motipur Sugar Factory v. Management). In both these cases it was held that if there had been no enquiry before discharge or dismissal of a workman, it was open to the management to justify the action before the tribunal by leading evidence and then the tribunal must go into the facts and decide whether the misconduct alleged had been proved and whether dismissal would be proper punishment. Shri Saha has accordingly asked the tribunal to decide on the basis of the evidence before the tribunal whether there was such misconduct as justified the order of dismissal. In the letter of dismissal, Ext. 1, it is first stated that it has been observed for sometime that the medical officer had been indulging in activities highly prejudicial to the interest and reputation of the firm and its business. This is a vague allegation. It may have reference to Dr. Dey Choudhury's having become a member of the Colliery Mazdoor Sabha which is a union controlled by the Communist party. Dr. Dey Choudhury in fact stated that Shri Ashok Pal Choudhury son of the proprietor asked him in June, 1966 to give up his connection with the union and Dr. Dev Choudhury refused. This evidence of Dr. Dey Choudhury has been challenged in cross-examination because this allegation is not mentioned in the written statement of the union. But if that allegation is discarded, there remains nothing to show that the medical officer had been indulging in activities prejudicial to the interest of the colliery.

8. The other allegation made in the letter, Ext. 1, is more definite, namely that on 3rd October, 1966 he wrongfully restrained the manager from carrying out his duties and obstructed him under threat in combination with others and

that his conduct amounted to criminal intimidation of the manager. Shri Saha has urged that this allegation has been proved and that it amounts to a misconduct which is sufficient to justify a dismissal. In the written statement of the management there appears to have been considerably exaggeration, because it was stated that the manager had been kept confined in his bungalow for about 24 hours and had been abused in filthy language. Even Shri Pushpal K. Banerjee, Mining Sirdar, who deposed for the management did not say that the manager had been kept confined for 24 hours. He said in examination-in-chief that on 5th October 1966, 20 or 25 members of the staff under the leadership of the medical officer and including himself went on a deputation to see the manager with a written memorandum; that the manager was not at his office; that some of the members of the staff wanted to go to the bungalow but the medical officer asked them not to proceed to the bungalow but to wait at the colliery office; that after about half an hour the manager came from his bungalow and stood in front of his colliery office and asked the men assembled what they had to say; that the medical officer gave the memorandum to the manager and stated that the staff wanted their back wages and the bonus; that the manager replied that he could do nothing but he would send a messenger to the owner and he would make payment as soon as possible; that the medical officer then said that unless the staff members were paid, the manager would not be able to work any further; the manager said that he could do nothing more and went back to his bungalow and then until about 5-30 P.M. the staff members remained standing in front of the bungalow and shouted some slogans and abuses against the manager. In cross-examination Shri Banerjee stated that the deputation started at 11 A.M. and that until about 7 P.M. the deputationist had stood in front of the bungalow preventing the manager from coming out of the bungalow. He also said that the manager wanted to go to Dhanbad that day but the medical officer asked him to go back to his bungalow and stay there and the manager did so. This however was not stated in examination-in-chief, where Sri Banerjee only stated that after saying that he could do nothing more than to send a man to the proprietor for money, the manager went back to his bungalow. He did not then say that the manager wanted to go elsewhere and that the medical officer asked him or compelled him to go back to his bungalow. Thus, apart from the fact that Shri Banerjee must be considered as a tainted witness, his evidence discloses some material discrepancy. Dr. Dey Choudhury in his evidence stated that verbal representation was made by about 20 members of the staff and that when they explained why they had come to see the manager and offered the written memorandum, the manager refused to accept the written memorandum and so next day it was sent by post. Dr. Dey Choudhury denied the suggestion that the staff members who had gone to make the representation had kept the manager surrounded or confined to his bungalow from about 12 noon to 5 or 5-30 P.M. He also denied that he had taken a leading part as a deputationist. Shri Banerjee stated that on 5th October 1966 at about 8 P.M. the manager sent for him and gave him a letter addressed to Shri Ashok Pal Choudhury who was at his residence at Ranaghat and with that letter and a copy of the memorandum which had been submitted by the staff members he went and saw Shri Pal Choudhury at Ranaghat and brought some money and returned in the following evening, and in the same evening, 6th October 1966, the manager distributed the money among the staff members giving one month's arrear wages to each one. Dr. Dey Choudhury admitted that on the next day or the following day one month's arrear pay was given to all the members of the staff. Shri M. M. Saha has urged on the basis of this admission that there must have been some sort of pressure on the manager which induced him to send the mining sirdar to the proprietor's house to get some money and pay the staff members. Undoubtedly there was some pressure on the manager which induced him to send the mining sirdar to get some money, but that does not necessarily show that the 20 or 25 persons including the medical officer had kept the manager confined from 11 A.M. or 12 noon until 5 or 5-30 P.M. in his bungalow. It would be sufficient pressure on the manager if 20 or 25 members of the staff i.e. all but the coal miners, had met the manager on his way to the office and told him that they were starving as they had not received 3 months' wages and one quarterly bonus and that unless they were paid it would not be possible for them to work. The allegation in the letter of dismissal, Ext. 1, does not suggest that anything more was done to the manager, because the conduct of the medical officer and others is said to have amounted only to criminal intimidation of the manager. There was however no threat of violence, and even the mining sirdar Shri Banerjee said that none of the members of the staff had any lathi or other weapon with them and none threatened the manager. Ext. 6 is a copy of the representation which was submitted or sought to be submitted on 5th October 1966. It mentions that salary for July, August and September 1966 and the second quarterly bonus had not been received and that as the Puja had

approached it would be very difficult for them unless they received at least one month's wages by the next day and the balance of their dues within a few days thereafter. Thereafter it was mentioned that the manager who had joined only about a month back was treating the members of the staff rather harshly and was not taking interest in seeing that they were paid their arrear dues. If the wages were outstanding for 3 months it is not surprising that the members of the staff who were suffering should make a strong representation to the manager, but the conduct does not amount to wrongful confinement or wrongful restraint or to criminal intimidation.

9. I must therefore hold that no misconduct justifying dismissal has been proved against the medical officer, S. N. Dey Choudhury. Accordingly Dr. S. N. Dey Choudhury is entitled to an order for reinstatement.

10. Dr. Dey Choudhury in his evidence stated that other arrears of wages for previous years were also due to him and he gave a statement of such arrear dues, Ext. 8, claiming over Rs. 3000/- . But it does not appear that before his dismissal he made any such claim for arrear dues. In any case the claim for arrear dues is not within the scope of this reference. As regards the period from the date of the dismissal until the date when he is allowed to rejoin, the medical officer should be paid at the rate half of his remuneration instead of full pay as claimed, because the colliery appears to be passing through a very critical period and has been unable to meet its wage bills in full regularly.

11. My award therefore is that the dismissal of Dr. S. N. Dey Choudhury, Medical Officer of Kajora and West Kajora colliery with effect from 1st December, 1966 was not justified, and I direct that the medical officer be reinstated within one month from the date of publication of the award, and he be paid half of his total remuneration from 1st December, 1966 until the date of rejoining. So far as Shri Gurupada Choudhury, an employee of the colliery is concerned, there is no dispute now regarding his stoppage of work or dismissal and therefore no adjudication is necessary.

Dated,

4th January, 1968.

(Sd.) S. K. SEN,
Presiding Officer.
[No. 6/14/67-LRII.]

New Delhi, the 16th January 1968

S.O. 337.—In pursuance of the section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the Manki Colliery No. 1 of Unican (Sales) Private Limited and Messrs Ramji Rupa, Managing Contractors (Post Office Ray, District Ranchi) of the one part and their workmen of the other part which was received by the Central Government on the 10th January, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR.

CAMP AT DHANBAD.

New Delhi, the 15th December 1967

PRESENT:

Sri G. C. Agarwala.—Presiding Officer.

CASE REF. NO. CGIT/LC(R)(98) OF 1967 (JABALPUR TRIBUNAL)

CASE REF. NO. 49 OF 1965 (DHANBAD TRIBUNAL)

PARTIES:

Employers in relation to Manki Colliery No. 1 of Unican (Sales) Private Limited and Messrs Ramji Rupa, Managing Contractors (Post Office Ray, District Ranchi).

Versus.

Their workmen through the Additional President, Indian National Mines Overman, Sirdar and Shotfirers' Association, East Bhowra Colliery, P.O. Patherddh (Dhanbad).

APPEARANCES:

For employers.—Sri K. C. Chakravarti, Advocate Authorised representative.

For workmen.—Sri Judagir Singh, workman concerned and Sri D. Nar singh Advocate, Authorised representative.

INDUSTRY: Coal Mine.

DISTRICT: Ranchi (Bihar).

AWARD

By Notification No. 2/7/65-LR. II dated 5th April, 1965, the Ministry of Labour and Employment, Government of India, referred the following matter of dispute to the Central Government Industrial Tribunal, Dhanbad, for adjudication. The case remained pending before the said Tribunal till transferred to this Tribunal by Notification No. 8/25/67-LRII dated April 25, 1967.

Matter of Dispute

Whether the action of the management of Manki Colliery No. 1 of Unican (Sales) Private Limited and Messrs Ramji Rupa, Managing Contractors, in suspending Shri Judagir Singh, Miners' Sirdar/Overman from service with effect from the 26th June, 1964 and subsequently dismissing him from service was justified? If not, to what relief is the workman entitled?

2. After issue of usual notices and a few dates of hearing in some of which the employers defaulted in appearance. The case was ultimately fixed today for hearing. The workman concerned appeared personally and filed a petition in the form of an affidavit, copy of which is an annexure to this award, intimating that he has no dispute left with the employers and would like to withdraw the dispute. The Union, Indian National Mines Overman, Sirdar and Shotfirers' Association, is absent and *ex parte* proceedings were recorded against them. In the absence of the Union, the petition on affidavit filed by the workman concerned, Sri Judagir Singh, is accepted. It is, therefore, held that since the workman concerned has settled the dispute with the management, the dispute is satisfactorily resolved and no specific finding on the issue under reference is necessary. An award is recorded accordingly.

(Sd.) G. C. AGARWALA,
Presiding Officer.
15-12-1967.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, JABALPUR.
AT CAMP COURT—DHANBAD.

CASE No. C.G.I.T./LC-(R) (98)/67.

Judagir Singh.—Petitioner.

Vs.

M/s. Ramji Rupa and others.—Opp. party.

The petitioner above-named Begs to state as follows:—

1. That in the above case the claim and dispute between the petitioner and Opp. parties has been amicably settled by the petitioner.
2. That all claims of dues has been paid and full final settlement of accounts and the petitioner has also issued and granted receipt acknowledging payment of the same.
3. That the petitioner does no more intend to proceed with the case and withdraws his application and claim.
4. That since the case has been amicably settled, no order for cost is necessary against the Opp. parties.
5. That the petitioner also has given the Opp. party to believe and understand that he no more likes to be in their employment. And the petitioner has no claim of employment or against dismissal.

It is, therefore, prayed that the petitioner be allowed to withdraw his petition, and the case be dismissed.

AND

For this the petitioner shall ever pray.

AFFIDAVIT

I, Judagir Singh, the petitioner in above case do hereby solemnly affirm and declare that the statements made above are true to the best of my knowledge.

Signed this on 11th day of December, 1967 at Ranchi.

Sd./- JUDAGIR SINGH,
Part of Award.

Deponent Judagir Singh who is identified by G. N. Shah of Chakta solemnly affirmed before me that the contents of this affidavit are true or correct.

Sd./- Illegible.
Magistrate 1st Class.

Ranchi.
11-12-1967.

Sd./- G. C. AGARWALA.
Presiding Officer.
[No. 2/7/65-LRII.]

ORDERS

New Delhi, the 16th January 1968

S.O. 338.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Ena Colliery of Messrs North West Coal Company Limited, Post Office Dhansar (Dhanbad) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of Ena Colliery of Messrs North West Coal Company Limited, Post Office Dhansar (Dhanbad) were justified in terminating the services of their workman Shri Mani Raj Nonia, Dusting Mazdoor, with effect from the 12th July, 1967? If not, to what relief is the workman entitled?

[No. 2/121/67-LRII.]

S.O. 339.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the South Bulliaree Kenduadih Colliery of Messrs East Indian Coal Company Limited, Post Office Jeolgora, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of South Bulliaree Kenduadih Colliery (Post Office Kusunda, District Dhanbad) of Messrs East Indian Coal Company Limited, in refusing employment to Shri Muni Pathak, Night Guard, with effect from the 17th February, 1967, and subsequently dismissing him from the 22nd April, 1967, was justified? If not, to what relief is the workman entitled?

[No. 2/142/67-LRII.]

New Delhi, the 18th January 1968

S.O. 340.—Whereas the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the mines of the Neyveli Lignite Corporation Limited, Neyveli and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute to adjudication;

Now, therefore, in exercise of the powers conferred by section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri M Tajammul Hussain as the Presiding Officer with headquarters at 1st line Beach Madras and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

Whether the demand for bonus under the Payment of Bonus Act, 1965 (21 of 1965) for the workmen of the mines of the Neyveli Lignite Corporation by the three unions viz. (1) Lignite Mines Labour Union (2) Neyveli Lignite Corporation Staff Union and (3) Neyveli Lignite Mines Progressive Workers Union on the management of Neyveli Lignite Corporation Limited, Post Office Neyveli, South Arcot District Madras State, for the years 1964-65 and 1965-66 was justified? If so, what should be the quantum of bonus payable for the two years separately?

[No. 1/23/67-LRIL.]

BALWANT SINGH, Under Secy.

(Department of Labour & Employment)

New Delhi, the 15th January 1968

S.O. 341.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Labour Court, Jabalpur in the matter of a complaint under section 33A of the said Act from Shri H. L. Lalwani of the State Bank of India, Bombay which was received by the Central Government on the 8th January, 1968.

IN THE COURT OF SHRI SHRI KRISHNA DAS SHAH: PRESIDING OFFICER: LABOUR COURT: UNDER I.D. ACT: (CENTRAL) NO. 1 JABALPUR:

CASE NO. 44/65. I.D.A. (CENTRAL).

Shri H. L. Lalwani c/o. State Bank of India Employees' Union, Bombay Circle, Bombay.—Applicant.

Versus

State Bank of India, Bombay.—Non-Applicant.

ORDER

Dated 3rd January 1968

Applicant had presented this application on 5th March, 1962, before the National Industrial Tribunal (Bank dispute), Bombay under section 33A of Industrial Dispute Act, (hereinafter referred to as the Act). It was alleged in the application that he was employed in the State Bank of India, Katni branch, as a clerk. He was given a charge-sheet to which the applicant submitted his explanation. Then an enquiry was held. The prayer of the applicant for the postponement of the enquiry was not accepted. The non-applicant then issued a show cause notice to the applicant and proposed his dismissal from service. The applicant submitted his replies to the show cause notice. The State Bank of India, Katni vide their letter dated 15th April, 1961, terminated the services of applicant from the afternoon of 15th April, 1961.

2. The applicant was a Joint Secretary of the State Bank of India Employees' Union, Katni branch and therefore he was a protected employee under section 33(3) of the Act and his services could not have been terminated without first obtaining of the permission of the National Tribunal. That on the 15th April, 1961, no application was made by the non-applicant for permission to terminate the services of the applicant. Under section 33(2) it was incumbent upon the non-applicant to file an application prior to the termination of the services of the applicant and also comply with this provision of section 33 of the Act. Subsequent to the termination of the applicant, the non-applicant has filed an application

before the National Tribunal for permission to dismiss the applicant from the services and the same is now pending before the Labour Court New Delhi. The Applicant therefore prayed that the National Tribunal may decide the above dispute.

3. In his written statement the non-applicant denied that the State Bank had terminated the services of the applicant in contravention of section 33(2)(b) of the Act. His services were terminated only after the application to the National Tribunal had been filed for approval of the action taken of dismissing the applicant. The other adverse allegation of the applicant were also denied.

4. It appeared that an industrial dispute concerning the applicant and others was pending before the National Tribunal, Bombay at the time of the disputed dismissal of the applicant in April 1961.

5. The Central Government by its notification dated the 23rd December, 1960, in exercise of the powers conferred by sub-section 2 of section 33B of the Act, authorised the above Tribunal to transfer proceedings pending before it under section 33 or 33A of the Act to Labour Court, Delhi or Dhanbad. The Tribunal therefore, transferred this case to Central Government Labour Court Delhi. The case was later on transferred to Central Labour Court, Bhopal under the orders of the Government of India, Ministry of Labour & Employment No. 55/(2)/63-LRIV dated the 23rd February, 1963.

6. Later on, the case was transferred from Labour Court, Bhopal to this court under orders of the Government of India (Ministry of Labour & Employment) No. 85/65 LR-V dated the 21st October, 1965.

7. The State Bank of India Bombay had also filed an application before the above National Tribunal on 6th May, 1961, under section 33(2) of the Act, for approval of the action of the non-applicant in dismissing the applicant. The application was also ultimately transferred to this Court by the above orders of the Government of India in the department of Labour and Employment and the National Tribunal. This case was registered here as case No. 124/65 I.D.A. (Central). After taking evidence of parties, this case was decided by this court on 7th June, 1966. It has been held in this case that the non-applicant had applied for permission to dismiss the applicant before actually dismissing him and that the other provision of section 33(2) of the Act, were also complied with and that there was no contravention of section 33 by the non-applicant and his action in dismissing the applicant was approved.

8. Section 33 provides two different forms of protection to the workman concerned in a pending industrial dispute according as they are or are not protected workers under section 33(3) of the Act. If the workman comes within the definition of a protected workman under section 33(3) then the employer is prohibited from dismissing him except with the prior permission in writing of the authority concerned. In the case of other workman concerned however prior permission of the authority before whom the industrial dispute is pending is not necessary, it is sufficient under section 33(2) if the employer dismisses a workman concerned for any misconduct not connected with the industrial dispute by paying him one month's wages and simultaneously makes an application for the approval of the action before the authority concerned.

9. In this case, as stated above it was alleged on behalf of the applicant that he was a Union Secretary and a protected worker. The parties were therefore asked to lead their evidence on this point but the applicant, on whom the burden of proving that he was a protected workman lay, did not produce any evidence to prove this fact which was denied by the opposite party in his written statement. Therefore it is held that the applicant Lalwani was not a protected workman and his case therefore will be treated as the case of a dismissal of an ordinary workman concerned under Section 33(2).

10. As stated above the application of the non-applicant for permission to grant approval of the action of dismissal taken against the applicant has already been granted by this Court. Under section 33A, the Court has to decide the questions (1) whether the employer has been guilty of contravening the provisions of section 33 and (2) if the above question is decided in favour of the workman, then the Court has also to decide on the merits of the disputed action of the employer. But when approval has been granted to the non-applicant for his action in dismissing the applicant under section 33(2) of the Act, the application of the applicant complaining about the breach of section 33 becomes infructuous and cannot be accepted. It is not open to the Court to treat its order granting approval of the employers action under section 33(2) of the Act as a nullity

while deciding a complaint under section 33A of the Act later on. Once permission under section 33 of the Act has been given by Industrial Tribunal, there does not remain any scope for a complaint under section 33A.

11. In view of the above, the complaint of the applicant is rejected. No order as to costs.

Sd/- SHRI KRISHNA DAS SHAH,
Presiding Officer,
Central Government Labour Court,
Jabalpur.
[No. F. 24/2/68/LR III.J]

S.O. 342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal Jabalpur in the Industrial Dispute between the employers in relation to the Bank of Behar Limited, Patna, and their workmen, which was received by the Central Government on 10th January, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, JABALPUR.

CAMP AT RANCHI

Dated December 20, 1967

PRESENT:

Shri G. C. Agarwala.—Presiding Officer.

CASE REF. NO. 18 OF 1967 (DHANBAD TRIBUNAL)

CASE REF. NO. CGIT/LC(R) (92)/67 (JABALPUR TRIBUNAL).

PARTIES:

Employers in relation to Bank of Behar Ltd., Patna.

Vs.

Their workmen through the General Secretary, The Bihar Bank Karamchari Sangh, Bihari sao Lane, Patna.

APPEARANCES:

For Bank.—S/Sri C. B Pathak and T. K. Prasad, Authorised Representatives.

For Workmen.—S/Sri D. N. Pande and the workman concerned, Bhagera Lal.

INDUSTRY: Bank.

DISTRICT: Patna (Bihar).

AWARD

By Notification No. 51(75)/66-LRIV dated 31st January, 1967, the Ministry of Labour, Employment & Rehabilitation (Department of Labour & Employment), Government of India, referred a dispute, as stated in the schedule to the order of reference, to Central Industrial Tribunal, Dhanbad, for adjudication from where it was transferred to this Tribunal by Notification No. 8/25/67-LRII dated April 25, 1967.

Matter of Dispute

Whether, having regard to the nature of the duties performed by him, Shri Bhagera Lal, Godown Peon of the Bank of Behar Ltd., Patna has been doing the work of a Godown Keeper. If so, to what relief he is entitled?

2. On behalf of the workmen one written statement dated 16th/20th March, 1967 and an additional written statement dated 21st March, 1967 were filed before the Dhanbad Tribunal. The employers (to be hereinafter called the Bank) filed their written statement-cum-rejoinder on the 13th June, 1967 when the case was taken up for preliminary hearing at camp Allahabad. After perusing the pleadings of the parties, the following additional issues were framed:—

Additional Issues

1. (A) Whether the reference is invalid as promotion is a managerial function and not a subject of Industrial Dispute.

- (B) Whether the issue under reference involves question of promotion?
2. Was Bhageral working as a Godown Peon or Godown Keeper is he entitled to the grade of Godown Kepper. If so, since when?
 3. Was he victimised in denying him the grade of Godown Keeper, and the action of the management was *mala fide*?
3. The Bank took adjournment on two subsequent hearings and on one occasion the parties jointly applied for time to compromise which was allowed but as the case was not compromised final hearing was rendered on 12th and 13th December, 1967 at camp Allahabad. The workmen examined one witness, the workman concerned, Sri Bhagera Lal, and the Bank also examined one witness, Sri K. C. Chowdhry as E.W.I. Eighteen (18) documents were exhibited for the workmen and thirteen (13) for the Bank.
4. Sri Bhagera Lal admittedly was appointed as a Godown Peon in 1948. He had been solely Incharge of various Godowns in different branches the last of which was of Patna Branch where he had been for a number of years. He is a non-matriculate. He has not been required to deposit any security which according to the Bank is necessary for a Godown Keeper to the tune of Rs. 1,000. There are no specified duties in any of the Bank circulars nor are the duties prescribed in any of the Bank award commonly known as Shastry and the Desai awards. Most of the duties which he had been rendering are admitted on behalf of the Bank. In his statement Sri Bhagera Lal deposed that he used to store and deliver goods on behalf of the Bank, a fact which is not disputed. It is also not disputed that he used to make entries in the Stock Cards which have been filed on being summoned by the workmen for the Patna branch and for the years 1962 to 1965. They are Ex. E/14. In the column of Godown Keeper Sri Bhagera Lal has been signing the same in the cards which also bear the signature of the inspecting officers. It is also not disputed that Sri Bhagera Lal used to lock and label the godowns, keep the keys with him, used to arrange delivery of goods, make reports about the suitability of godowns to the Manager. His further statement that he used to prepare and send lodgement with invoices to the Bank was denied on behalf of the Bank. The stand taken by the Bank is that the essential duties of the Godown Keepers are to maintain accounts and ledgers and none of these clerical parts of the duty of Godown Keeper was rendered by Sri Bhagera Lal. All that he had been doing was essentially in the nature of routine and manual work which was part of-duty of a peon. He had been clamouring and representing for promotion to the post of Godown Keeper but as he was not found qualified nor suitable for promotion he could not be so promoted. It was further contended that promotion is a management function and this Tribunal has no jurisdiction. There was an allegation of victimisation also on the part of the workmen and this was denied by the Bank. With these please issues may now be examined.

Findings:

Issue No. 1.—The plea raised by the Bank is clearly misconceived. As the wordings of the reference would show, the question is not of promotion of Sri Bhagera Lal but whether he had actually discharged the duties of a Godown Keeper and yet was kept and paid as Godown Peon. The grievance of the workman is that although he had been rendering the entire work of a Godown Keeper yet the Bank did not pay him for the duties rendered. Promotion no doubt is a management function and if the issue had involved the question whether he should be so promoted that undoubtedly would have been an appropriate defence for the Bank and the Tribunal could not have interfered in the discretion of the Bank unless the denial of promotion was malafide. That also would not have involved the question of jurisdiction but the expediency and the desirability of the Tribunal to interfere in the discretion. In any case the issue under reference, directly or indirectly, does not cover the question of promotion and therefore the issue is decided against the Bank.

Issue No. 2.—There seems to be little doubt that Sri Bhagera Lal had essentially been discharging the duties of a Godown Keeper though designated as a peon. The very fact that he had been solely incharge of the godowns for the storage, safe custody and delivery of goods to the constituents and had been maintaining Stock Cards are clear duties which are essentially part of the duties of a Godown Keeper. The stand taken by the Bank that the clerical part of the duty regarding maintenance of account books was done at the Bank office by clerks does not really matter. As the nomenclature of "Godown Keeper" denotes the person is keeper of the Godown and not a clerk. As a matter of fact, this category has been treated separately in between the category of peons and clerks in the Bank Awards except where the post of a Godown Keeper has been

merged with the clerk. It was admitted by the Bank's witness Sri K. L. Chowdhry, that there were no Godown Keepers in Patna branch and office clerk used to maintain the accounts. According to him, it was only after the Reserve Bank inspection in 1964 that the Bank decided to promote some of the godown peons after a test. Such a test was held on 1st October, 1964 and Ex. E/9 is the report of the interview held. The officers who conducted interview made a remarkable observation which is not quite intelligible. It runs as follows:—

"In accordance with the directions in the notice dated 2nd September, 1964, issued to us, we have interviewed 38 persons in three batches on different dates.

In our opinion the persons who have done godown work in the past have more or less the same standard of knowledge and practical experience of godown work.

We do not however consider any of the candidates suitable for selection as godown keepers who get the same pay and status of clerks.

Further we see no point in the Bank's paying a higher remuneration for the same quality and quantity of work, a higher remuneration than what is paid to them as Godown peons at present."

While holding that none of the candidates were found suitable for selection, they seem to have been guided by the principal consideration as to why the Bank should pay higher remuneration for a job which is being rendered by the godown peons. This last paragraph of the report brings out the cat out of the bag. They thought that since the peons are doing the job why should a higher remuneration be paid to them as godown keepers. This obviously is an unfair labour practice. In other words, the Bank wanted to continue extraction of work of godown keepers from the peons and deny them the payment of a higher wage. This precisely they had been doing in the past and continued to adhere to the practice inspite of the objection of the Reserve Bank. It is significant to find that not only in Stock Cards (Ex. E/14) referred to earlier but the Bank had been describing and addressing Sri Bhageralal in many of the communications as Godown Keeper. They range from 1963 and onwards. Ex. W. 1 dated 7th May, 1953 is a letter addressed to Sri Bhageralal while at Jahanabad wherein he had been described as Godown Keeper and was directed to hand over charge to one Sri Bhagwan Dayal Chaubey. Ex. W/2, a letter dated 20th April, 1954, while transferring Sri Bhagera Lal he was directed to maintain a register and keep a proper note of delivery and receipt of goods. In two communications of 1954 dated 7th May, 1954, and 19th August, 1954 (Exts. W/3 and W/4) he was described as Godown Keeper. There is yet another communication dated 17th September, 1959 (Ex. W/8) wherinc Sri Bhagera Lal as Godown Keeper was directed to hand over certain Railway Receipts to a party. It is indeed true that in some of the communications filed by the Bank he was described as Peon also viz. Ex. E/5 dated 22nd September, 1954, Ex. E/10 dated 10th January, 1953, Ex. E/12 dated 12th December, 1952, and Ex. E/4 dated 3rd September, 1964. That may be so but the Bank has failed to explain how he was described as Godown Keeper in other communications which have been filed on behalf of the workmen. Not only this, before the dispute was raised and pressed in conciliation the Bank Manager recommended the case of Sri Bhagera Lal to the General Manager by letter dated 17th June, 1966 (Ex. W/10) in following terms:—

"The above employee although designated as Godown Peon is all along performing the duty of Godown Keeper since the very date of appointment in the Bank service and therefore his case deserves favourable consideration."

This is a clear admission on behalf of the Bank that he had been doing the duties of Godown Keeper throughout and no attempt has been made to explain away this fact.

The Bank has relied on the fact that a Godown Keeper has to furnish security of Rs. 1,000 for which he has also to execute a security bond, proforma of which was filed. That is only an enabling provision and the Bank may or may not demand the security. As a matter of fact, as admitted on behalf of the Bank, no one was appointed as a Godown Keeper and therefore the question of enforcing this did not arise. It is not a condition precedent and a mandatory on the part of the Bank. Without obtaining any security or bond they extract the work of a Godown Keeper from a Peon. This precisely is in the nature of unfair labour practice. The fact that Sri Bhagera Lal himself had been pressing for promotion, in proof of which the Bank filed his application dated 19th August, 1958, (Ex. E/3) cannot be used against him to negative the fact that he was not actually working as a Godown Keeper. On the other hand, it supports his contention that he had

been working as such and therefore claimed the designation and wages of a Godown Keeper.

It must, therefore, be held that Sri Bhagera Lal was in fact rendering the duties of a Godown Keeper and the issue is held accordingly.

Issue No. 3.—The plea was raised on a misconception. After the dispute has been raised in September, 1966, the Bank relieved him of some of the duties so as to change the complexion of the dispute and this was resisted both by the Union and the workman concerned, Sri Bhagera Lal, as a *mala fide* action on the part of the Bank so as to victimise him. Any subsequent action taken by the Bank is wholly immaterial for the determination of this controversy and may give a cause of action for a complaint under Section 33-A I.D. Act. The issue is, therefore, unnecessary for determination. For the earlier action before the reference, there is no real plea of victimisation. As a matter of fact, the grievance is in the nature of unfair labour practice which has already been held to be so against the Bank.

Decision:

The result is that Sri Bhagera Lal having regard to the nature of duties performed by him must be held to be entitled to the remuneration and wages as a Godown Keeper, as prescribed under the Sastry Award as modified by L.A.T. and the Desai Award from the date of enforcement of these awards till the dispute was raised in conciliation. The determination of this question can be computed under Section 33-C I.D. Act, there being no relevant material before me on the question. The Union will get Rs. 100 as costs from the Bank.

(Sd.) G. C. AGARWALA,
Presiding Officer.
20-12-1967.
[No. 51/75/66-LRIV.]

New Delhi, the 17th January 1968

S.O. 343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Madras in the industrial dispute between the employers in relation to the Punjab National Bank Limited, Madras and their workmen, which was received by the Central Government on the 12th January, 1968.

BEFORE THE INDUSTRIAL TRIBUNAL, MADRAS

Tuesday, the 26th Day of December, 1967

PRESENT:

Thiku M. Tajammul Hussain, B.A., B.L. Industrial Tribunal
INDUSTRIAL DISPUTE NO. 37 OF 1966

(Central Government)

(In the matter of the dispute between the workmen and the employers in relation to the Punjab National Bank Ltd., Madras.

BETWEEN:

The Assistant Secretary, Punjab National Bank Staff Union, No. 233, Angappa Naicken Street, Madras-1.

AND

The District Manager, The Punjab National Bank Ltd., Southern Circle, 107, Amenian Street, Madras-1.

Reference:

Order No. 51(49)/66-LR-IV, dt. 23rd December, 1966 of the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India.

This dispute coming on for final hearing on the 13th day of November, 1967. upon perusing the reference, claims and counter statements and all other material papers on record and upon hearing the arguments of Thiru P. J. Seetharaman, Advocate for the Union and of Thiruvalargal M. R. Narayanaswamy and D. Meenakshi Sundram, counsel for the Management, and the dispute having stood over till this day for consideration, the Tribunal made the following.

AWARD

This reference by the Central Government, relates to the dispute between the workmen and management of the Punjab National Bank Limited and the matters referred to this Tribunal for adjudication is set out in the schedule to the reference and it is as follows:—

2 "Whether the management of the Punjab National Bank Limited, Southern Circle, 107 Armenian Street, Madras-1, is justified in denying officiating allowance or any other form of extra remuneration when a Supervisor is posted as Workman Accountant. If not, to what relief Shri Somasundaram is entitled to?"

3. A claim statement was filed by the Punjab National Bank Staff Union. According to that statement, the Punjab National Bank Limited, is an "A" Class Bank carrying on banking business throughout the Union of India and has over 400 branches in the country. The bank was a party before the Sen Tribunal and subsequently before the Sastry and Desai Tribunals and as such, the Bank is a party to the Sastry Award and Desai Award. The bank has in its service various categories of employees with distinct and separate designations and distinct and specific duties for each cadre or category of employees. The Bank has officers who are given various designations with relevant and appropriate grades and scales of pay and other emoluments as applicable to the respective grades. One such distinct category of employees is the grade known as "Accountant" which was formerly classified as Grade I and Grade II in the bank's grade and had its own distinct scale of pay and other emoluments. This Grade I and Grade II have now been re-classified as Grade E and Grade D with a time scale of pay running from Rs 515 to Rs 1000. The employees who are designated as Accountants are now in the modified grade and are regular officers of the Bank and do not form part of the workmen category. The Bank awards as also the settlement dated 19th October, 1966 are in respect of the workmen-staff and the Accountants in the Punjab National Bank Limited are non-workmen for whom the respondent Bank had provided for a distinct and separate scale of pay altogether with different allowances. The post of the Accountant is a promotional post. The accountants in the bank are governed by the scales of pay and conditions of service as prescribed in the service. On 6th August, 1965, the Bank issued an order to Shri Somasundaram, a workman at the Armenian Street Office informing him that he was to work as Accountant, with effect from that date. The vacancy was caused by the promotion of one S i M K. Menon, Accountant in the same branch as Assistant Manager. In promoting several junior as Accountants over the head of Sri Somasundaram, the management acted *mala fide* and resorted to unfair labour practice. The names of juniors are given in the claim statement.

4. According to claim statement in terms of the provisions of the Sastry Award, persons who are performing supervisory duties are to be granted the option of either opting for the award scales of pay with the appropriate special allowance or for opting for the Bank's scales of pay and other emoluments. Sri Somasundaram is entitled to be treated as officiating in the post of accountant and is entitled to the officiating allowance. Sri Somasundaram is also entitled for protection of his seniority in the cadre of accountants also since he was in fact posted as accountant.

5. The management has filed a counter statement. According to that statement, the dispute referred to this tribunal is not an industrial dispute but an individual dispute. In terms of paragraph 5/14 (i) of the Bipartite settlement, which has become effective from 19th November, 1966, the existing supervisors and workmen accountants have been given the designation of "Special Assistants" and have also been allotted the same duties and also the same amount of special allowance. Sri Somasundaram was admittedly a special Assistant. Thus, distinction, if any as alleged by the Union, between the two posts of supervisor and workmen accountant no more exists. The terms of reference confine the claim to officiating allowance or any other form of remuneration when a Supervisor is posted as a Workman Accountant and thus specifically excludes from its scope any claim arising out of employment as an officer. The posting of a supervisor as a workmen accountant does not involve any promotion in as much as both of them are governed by Award provisions which prescribe the same scale of pay and the same amount of special allowance for supervisors as well as workmen accountants. After coming into force of the Bipartite settlement all accountants of the Bank would be officers. Sri Somasundaram was posted as accountant but was not required to work in the place of an officer Accountant. Sri Somasundaram was posted to work as a workmen accountant which was not a post carrying a salary higher than that of a supervisor. The award has prescribed the same scale of pay and same amount of special allowance for the both supervisors as well as workmen accountants. Besides, Sri Somasundaram was required to work as a workmen Accountant in a permanent vacancy. That being the position, he was not entitled

to any officiating allowance in any case. Sri Somasundaram was posted as accountant but he did not work as such and he can have no grievance to the posting of persons mentioned by him as accountants and their subsequent promotion to Officer's cadre. Had he not declined but worked as workman, accountant, he would have also been offered the officer's grade and the conditions of service as applicable to the officers and on his acceptance allowed the same. Sri Somasundaram refused to work as a workman accountant as would be evident from his representation dated 10th September, 1965, annexure IV of the claim statement. By his own default, apart from other grounds, he, having not worked as an accountant, is not entitled to any of the claims made by him.

6. The Union has filed a rejoinder statement. According to the rejoinder, the Government's order of reference itself will make it clear that the dispute is between the workmen of the Punjab National Bank Ltd., and the Management of the Punjab National Bank, Limited. The Union submits that apart from the description of the parties in the reference, the notice of the reference is to the Assistant Secretary of the Union and not to Sri S. Somasundaram. There is no cadre of workman accountants nor has such cadre of workman accountants been given the designation of Sub-Accountants in terms of para 5.14(1) of the Bipartite settlement dated 19th November, 1966. Sri Somasundaram was posted as Accountant as is admitted by the Respondent. There was no question of Sri Somasundaram being workman accountant or Supervisory accountant.

7. The issue that arises for consideration is the matter set out in the schedule to the reference cited and it is as follows.

8. "Whether the management of the Punjab National Bank Ltd., Southern Circle, 107, Armenian Street, Madras-1, is justified in denying officiating allowance or any other form of extra remuneration when a Supervisor is posted as Workman Accountant. If not, to what relief Sri Somasundaram is entitled to?"

9. On 18th September 1967, the management filed an affidavit in court. According to the affidavit, at present, there is no category of workmen in the Bank styled as "Workman-Accountant". All accountants fall in the Officer's Grade and hence, whatever might have been the position in the past, there is no question of a Supervisor being posted as a workman accountant. The respondent and its employees are parties to the Bipartite Settlement dated 19th October 1966 entered into between Bank managements and their employees before the Chief Labour Commissioner (C) Delhi. Accountants are not in the category of workmen but a new category of Special Assistants has been created for which a special allowance has been provided for Sri Somasundaram who could have been granted relief, if any, in this reference, has now been promoted as an officer of the Bank, by order dated 15th June 1967, and he has accepted the same. After the promotion of Sri Somasundaram, there is no need to answer the issue referred for adjudication.

10. It is not denied by the Union that Sri Somasundaram has been promoted. As Somasundaram has been promoted as an officer he is not entitled to any relief in this reference. Hence, the second part of the reference has to be answered in the negative.

11. With regard to the first part of the issue, the contention of the management, is that there is no category of workmen in the Bank styled "Workman-Accountant". As there is no post of Workman-accountant in bank, the question of promoting a supervisor as Workman-accountant does not arise. Accountants are not in the category of workmen, but a new category of special assistants has been created. All accountants fall in the officers' grade and hence whatever might have been the position in the past there is no question of a Supervisor being posted as a workman-accountant. In view of the changed circumstances, and in view of the fact that there is no category of workman-accountant at present and all accountants fall in the officers' category, no question of promoting a supervisor as workman accountant will arise.

12. Ex. M. 1 is true copy of the order promoting Sri Somasundaram as officer with effect from 1st July 1967; is Grade R. Ex. M. 2 is the copy of the letter from Sri S. Somasundaram to the management, accepting the offer of the management dated 24th October 1967. A copy of the settlement arrived at between the Bank Managements and their workmen on the 19th October 1966 was filed for reference. A list of workmen who are eligible for special pay is given in the settlement. Special Assistants are one such category of employees who are entitled to special pay. There is no category as Supervisor or Accountant in Appendix B of the settlement.

13. As indicated earlier, in the absence of any category of workman-accountant, the question of promoting the supervisor as workman-accountant does not arise. In view of the non-existence of the post of workman-accountant at present, the first portion of the issue itself has become wholly of academic interest and the first part of the issue covered by the reference does not arise for adjudication. The second part also does not arise for consideration, as Sri Somasundaram has been promoted as an Officer. As no question of promoting a supervisor as workman-accountant will arise as there is no post of workman-accountant in the bank, it is not necessary to record a finding on the first part of the issue.

14. An award is passed in terms of my finding on the issue. Parties are directed to bear their own costs.

Sd/- M. TAJAMMUL HUSSAIN,
Industrial Tribunal.

List of Witnesses Examined.

For the workers.—Nil.

For the management.—Nil.

List of Documents Marked:

For the workers :—

| | | |
|------------|----------------|--|
| Ex. W. 1. | 25-6-1960 | Revision Circular No. D/253. |
| Ex. W. 2 | 6-6-1963 | Revision Circular No. D/306. |
| Ex. W. 3. | 22-8-1963 | Revision Circular No. D/313. |
| Ex. W. 4. | 2-3-1965 | Revision Circular No. D/358. |
| Ex. W. 5. | 17-9-1963 | Office Order No. 104. |
| Ex. W. 6. | 12-7-1966 | Office Order No. 138. |
| Ex. W. 7. | 23-9-1964 | Letter No. STF/36201 |
| Ex. W. 8. | 5-10-1964 | Letter No. STF/28255. |
| Ex. W. 9. | 20-7-1964 | Letter No. DMS/STI/16363. |
| Ex. W. 10. | 17-9-1964 | Letter from Sri K. Dwarkanath Menon. |
| Ex. W. 11. | 30-9-1964 | Letter No. DMS/STI/25055/64. |
| Ex. W. 12. | 19-2-1965 | Letter from Sri K. Dwarkanath Menon. |
| Ex. W. 13. | 2-3-1965 | Letter No. DMS/STF/5020/65. |
| Ex. W. 14. | 10-7-1965 | Letter from Staff Department, Head Office, New Delhi. |
| Ex. W. 15. | 2-4-1962 | Letter No. STI/761 |
| Ex. W. 16. | 17-12-1963 | Letter from Sri K R. Menon. |
| Ex. W. 17. | 12-7-1963 | Letter No. DMS/STI/20649/f3. |
| Ex. W. 18. | 24-3-1964 | Duty Sheet for staff, Meena Office. |
| Ex. W. 19. | 11-5-1966 | Letter No. DMS/STF/14022/6. |
| Ex. W. 20. | 13-6-1966 | Letter No. DMS/STF/14070/66 |
| Ex. W. 21. | 28-2-1966 | Letter No. 110/S/28/66 |
| Ex. W. 22. | 18-11-1966 | Letter from Staff Department, H.O. New Delhi. |
| Ex. W. 23. | (i) 18-2-1967 | Letter from Staff Department, Head Office, New Delhi offering Sri P.S.V. Raghavan Officers' "Grade E". |
| Ex. W. 23. | (ii) 18-2-1967 | Letter from Staff Department, Head Office, New Delhi offering Officers' "Grade E" to Sri R. Panchapakesan. |
| Ex. W. 24. | 6-8-1965 | Office Order No. 188. |
| Ex. W. 25. | 6-8-1965 | Extract of Passing and Signing Powers from the Book of Instructions. |
| Ex. W. 26. | 6-8-1965 | "Miscellaneous Powers". |

Documents Marked for the Management.

| | | |
|-----------|---------|--|
| Ex. M. 1. | 15-6-67 | Copy of letter from the Staff Manager, Punjab National Bank Limited, Staff Department, Head Office, New Delhi to Thiru S. Somasundaram, Special Assistant, B.C. Armenian Street, Mirras, promoting as officer. |
|-----------|---------|--|

Ex.M 2. 24-6-67 Copy of letter from Thiru S. Somasundaram, addressed to the Staff Manager, Head Office, New Delhi acknowledging the receipt of M-I.

NOTE:—The Parties are directed to take return of their document/documents within 6 months from this date.

[No. 51/49/66-LRIV.]

S.O. 344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad in the industrial dispute between the employers in relation to the State Bank of India, Ranchi and their workmen, which was received by the Central Government on 11th January, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 12 OF 1967

PARTIES:

Employers in relation to the State Bank of India.

AND

Their workmen

PRESENT:

Sri Nandagiri Venkata Rao, Presiding Officer.

APPEARANCES:

For the employers:—Sri Ajit Roy Mukherji, Counsel.

For the workmen:—Sri Shankar Bose, Officer of the I.N.T.U.C.

STATE:—Bihar

INDUSTRY: Bank.

Dhanbad, dated the 8th January, 1968, 18th Pous, 1889

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the State Bank of India and their workmen, by its order No. 51(76)/63-LRIV dated 5th January 1965 referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:—

SCHEDULE

'Whether the transfer of Sri Kapil Muni Ojha, a member of the Subordinate Staff of the State Bank of India, from Ranchi to Allahabad is justified and if not, to what relief is he entitled?"'

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 8 of 1965 on its file. Both the parties filed their statement of demands. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred to this Tribunal, by the Central Government by its order No. 8/25/67-LRII dated 8th May 1967 under Section 33(B)(1) of the Industrial Disputes Act, 1947. Consequently, the reference is renumbered on the file of this Tribunal as reference No. 12 of 1967.

3. In the year 1962 Kapil Muni Ojha (hereinafter referred to as the affected workman) was a subordinate staff engaged as a messenger of the Ranchi Branch of the State Bank of India and one Ram Baran was working in the same capacity at Allahabad Branch of the Bank. The Deputy Secretary and Treasurer of the bank transferred the affected workman to Allahabad Branch in place of Ram Baran and Ram Baran to Ranchi Branch in place of the affected workman. Ram Baran resumed duty at Ranchi Branch but the affected workman did not proceed to Allahabad. After a protected correspondence between the affected workman, his Labour Union and the employers an industrial dispute was raised on behalf of the affected workman which gave right to the reference. These facts are not

controverted. The case of the workmen is that the order of transfer of the affected workman was malafide and was the outcome of the motive on the part of the employers to victimise him for his trade union activities and that it was in violation of the service conditions governing him. The allegation is flatly denied by the employers. The workmen were represented by Sri Shankar Bose, Officer of the I.N.T.U.C. C/o Collyery Mazdoor Sangh, Dhanbad and the employers by Sri Ajit Roy Mukherji, Counsel. By consent of the employers Exts. W1 to W5 were marked for the workmen and by consent of the workmen Exts. M1 to M47 for the employers were marked. On behalf of the employers two witnesses, MW1 and MW2 and on behalf of the workmen the affected workman, WW1 were examined and Exts. M48 to M62 were marked.

4. In their statement of demands the workmen had pleaded that the workmen or the bank at Ranchi had organised an unit of the State Bank of India Employees' Association that the affected workman was elected Secretary of the unit, that the local officers of the bank much disliked this motive of the workmen and wanted to nip the association in the bud and that with this end in view the agent of the bank suddenly issued an order transferring the affected workman to Allahabad branch of the Bank. But no material is brought on record to substantiate the allegation, barring the oral testimony of the affected workman, WW1. Except stating that his union, the Employees' Association, was started in rivalry with the Staff Association and that the management had given recognition to the Staff Association and not to the Employees' Association, the affected workman did not even whisper anything to infer malafide intention on the part of the Bank in transferring him to the Allahabad Branch. He has conceded in deposition that there was no industrial dispute between the employees of his association and the management of the Bank at the time when the notice of his transfer was issued. He has pointed out that during the material time R. P. Srivastava was the agent of the Ranchi Branch of the Bank. R. P. Srivastava is examined on behalf of the employers as MW 2. He has deposed that at the time of the order transferring the affected workman to Allahabad branch of the Bank there was no dispute between him and the Employees' Association. Exts. M 48, M 49 and M 50 are proved by MW 1. Ext. M 48 is a letter from the agent of Allahabad branch of the Bank to the Secretary and Treasurer of the head office of the Bank at Calcutta recommending transfer of Ram Baran to any other branch. It is stated in the letter that there had been violent quarrels among members of the subordinate staff giving rise to the representation from the local unit of the State Bank of India Staff Association for transferring of Ram Baran. Exts. M 49 and M 50 are letters from the Deputy Secretary and Treasurer to the Agent of Ranchi and Allahabad branches of the Bank, informing them of the decision to interchange the affected workman at Ranchi branch with Ram Baran at Allahabad branch and stating that the two employees should be relieved of their duties with instructions to report at the transferred places. It emerges from these letters that the transfer of the affected workman was initiated by the Deputy Secretary and Treasurer of the head office of Bank at Calcutta and not by the local agent of the Ranchi branch of the Bank. Further, it is also manifest that the Deputy Secretary and Treasurer had to move in the matter owing to the complaint by the agent of Allahabad branch of the Bank against Ram Baran. Ram Baran had to be transferred to some other branch of the Bank and some other member of the subordinate staff, a messenger, had to be posted in his place, or a new man had to be appointed burdening the Bank with the salary of one more employee. If the authorities of the Bank chose to interchange the affected workman and Ram Baran no ill motive on the part of the Bank authorities can be inferred. It is elicited from MW2 that some time ago he had reported against the affected workman for opening more than one account in different Banks and issuing a cheque before providing sufficient fund in the Bank. But there is no room to contend that transfer of the affected workman was a direct result of the complaint. There is not even a suggestion that the Deputy Secretary and Treasurer of the head office of the Bank could have motive against the affected workman. On this material I do not find any substance in the allegation of the workmen that the transfer of the affected workman was the outcome of the victimisation policy of the Bank.

5. Paragraph 535 and 536 of the Shastri Award [All India Industrial Tribunal (Bank Disputes) Award] are relevant to consider if the transfer of the affected workman was in violation of any of the conditions of service governing him. These paragraphs are under Chapter XXVIII of the Award relating to the policy regarding transfer of staff. Neither of these two paragraphs lays down absolute prohibition of transfer of any member of the subordinate staff of a Bank. On the other hand it is pointed out that transfers are rendered necessary by the exigencies of administration, that they are normal incidents of the working of a

Bank and that they must be left to the discretion of those who guide the policy of the Bank and manage its affairs. Paragraph 536 deals with the general transfers irrespective of the fact whether the transferee is a trade union worker or not. It says that so far as members of the subordinate establishment are concerned there should be no transfers ordinarily and if there are any transfers at all they should not be beyond the language area of the person so transferred. It is in the evidence of MW 1 that the mother tongue of the affected workman is Hindi and this is the regional language at Allahabad and this fact is not denied by the workmen. The paragraph says that 'ordinarily' members of the subordinate establishment should not be transferred, but does not lay down absolute prohibition. The provision does not give any right to the workman transferred to demand explanation from his employer for his transfer nor is the employer obliged it to lay down the reasons compelling him to transfer the workman. On behalf of the workmen a question was put to MW 1 if the consent of the affected workman was obtained for his transfer to Allahabad. But no such consent is contemplated for transfer of a member of the subordinate staff. The question of consent arises only if the transferred workman did not belong to the subordinate staff and it is proposed to transfer him outside the state or the language area.

6. Paragraph 535 of the award applies to transfers of workmen when they are office bearers of a trade union. In order that suspension of ulterior motives on the part of the employers may be avoided as far as possible, the paragraph lays down the following directions:—

- "(1) Every registered bank employees' union, from time to time, shall furnish the bank with the names of the President, Vice President and the Secretaries of the Union;
- (2) Except in very special cases, whenever the transfer of any of the above mentioned office bearers is contemplated, at least five clear working days' notice should be put up on the notice boards of the bank of such contemplated action;
- (3) Any representations, written or oral, made by the Union shall be considered by the Bank;
- (4) If any order of transfer is ultimately made, a record shall be made by the bank of such representations and the bank's reasons for regarding them as inadequate; and
- (5) The decision shall be communicated to the union as well as to the employee concerned."

It is contended on behalf of the employers that paragraph 535 of the award has no application to an office bearer of a branch union. In the instant case the affected workman, WW 1 has conceded that out of members of the staff working in Ranchi branch of the bank only 5 were members of the Employees' Association and that they were the same as shown as office bearers in the letter, Ext. W 5. In other words, the Employees' Association consisted of only 5 members and they were all office bearers. It is urged that if paragraph 535 is to be applied to such unions wherein all the members are office bearers, the very purpose of the provision contained in the paragraph is defeated. Without going into the merits of the objection I find that even if the provision contained in the paragraph is assumed to be applicable to the affected workman who was during the material period the Secretary of the Employees' Association of Ranchi Branch of the Bank, the directions laid down in the paragraph are substantially satisfied. Exts. M 2 and M 3 are memoranda of the Ranchi Branch of the bank informing the affected workman about the decision to transfer him to Allahabad branch and they are dated 28th November 1962. Thereafter there was a lot of correspondence between the affected workman and his union and the bank. On 7th December 1962 a fresh notice, Ext. M 55 was put up on the notice board in compliance of the directions contained in para 535 of the award. MW 1 has explained that after the memorandum, Ext. M 2 was issued the affected workman submitted a representation, M 5 to the Head Office of the bank through the agent of Ranchi Branch of the bank and that when it was noticed that the affected workman was the Secretary of Ranchi unit of the Bank Employees' Association, the notice Ext. M 55 was put up. He further deposed that nothing prior to the transfer of the affected workman was it known to the bank head office that the affected workman was the Secretary of the Ranchi unit of the State Bank Employees' Association. The witness also pointed out that before the fresh notice, Ext. M 55 was put up the Central unit of the State Bank Employees' Association, Calcutta also had made a representation, Ext. M 7 for cancellation of the transfer of the affected workman on the ground that he was a Secretary of the Ranchi unit of the Association. It is in the evidence of MW 2, the then Agent of Ranchi Branch of the bank, that the notice.

Ext. M 55 was placed on the notice board. The notice, Ext. M 55 was dated 7th December 1962 as I have already pointed out and it was put up on the notice board. The notice stated that instructions regarding transfer of the affected workman from Ranchi Branch would be issued by the agent in due course. It was only on 8th March 1963 the agent issued orders directing the affected workman to report to duty at Allahabad Branch on 16th March 1963. It is not denied that he, as 'cheif' of his duties at Ranchi Branch of the bank on 16th March 1963. Thus, the notice was put up more than 5 clear working days before the contemplated action namely, transfer of the affected workman was actually effected. Even after the notice was put up on the notice board representations were made by the Secretary of the Ranchi Branch of the State Bank of India Employees' Association on 10th December 1962, Ext. M 12 and on 14th December 1962, Ext. M 15. They were considered by the bank as is seen by letters Exts M 14 and M 17 and the bank found it not possible to cancel the transfer order. Thus, all the directions contained in paragraph 535 of the award are satisfied. On behalf of the workmen reference is made to paragraph 519 of the award and argued that the notices contemplated to be exhibited in terms of the award should not only be in English but also should be in the principal language of the district or locality and that, as no translations of the notices were exhibited or served on the affected workman or his union, direction No 2 of paragraph 535 should not be deemed as complied with. This is a mere technical objection without any substance. All the admitted documents show that the entire correspondence between the affected workman, his union and the bank was only in English and at no stage any complaint was made for want of translation of any notice. The affected workman examined himself in WWI but even in his evidence nothing is shown that any letter or notice addressed to him or exhibited on the notice board was not known to him or he did not understand it. For these reasons, I find that all the necessary conditions laid down in paragraph 535 of the award were fully satisfied. Hence, it cannot be argued that the transfer of the affected workman was not justified.

7. It is pointed out on behalf of the employers that the appropriate Government (the Ministry of Labour and Employment of the Central Government) had already gone through the case and arrived at the conclusion that the transfer of the affected workman from Ranchi to Allahabad was made in the normal course, that there was no *malafide* intention on the part of the bank, that, accordingly, it declined to refer the dispute for adjudication and that, as such, it was not open to it to refer the matter again for adjudication on the same set of circumstances. In this connection I am referred to the letter of the Ministry No 51(75)/63-LRIV dated 1st August 1964 Ext. M 45 addressed to the agent, State Bank of India, Ranchi and the General Secretary, State Bank of India Employees' Association, (Bengal-Circle), Camp Office 10, Hastings Street, Calcutta-1. It stated, "I am directed to say that it is considered that the transfer of Sri Kapil Muni Ojha from Ranchi to Allahabad was made in the normal course and that there was no *malafide* intention on the part of the management. In view of this the dispute is not considered fit for reference to adjudication." The letter was signed by the Under Secretary Sri O. P. Talwar. The present reference dated 5th January 1965 is also signed by the same Under Secretary Sri O. P. Talwar. In Gandhara Transport Company (P) Ltd., Vs. State of Punjab (A.I.R. 1966 Punjab 354) it was held that once the appropriate Government has taken a decision declining a reference in respect of the dispute it can not reconsider the matter subsequently and then make a reference. For this reason also the case of the workmen cannot be upheld.

8. The workmen have claimed payment of full wages and other allowances to the affected workman as if he was on duty although from the date of his idleness till the date of his reumption of duty. The affected workman, WWI himself has pointed out that he got his salary from the bank till 14th March 1963 and that ever since his transfer order was passed by the bank he is doing agriculture. His evidence and cheques, Exts M 56 to M 60 also show that as an agriculturist he is having substantial business. In this view I find that the affected workman is not entitled to any benefit even if his transfer was held as not justified.

9. As a result of my above discussion I find that the transfer of the affected workman, Kapil Muni Ojha, a member of the subordinate staff of the State Bank of India from Ranchi to Allahabad was justified and, consequently, he is not entitled to any relief. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

APPENDIX I

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD

REFERENCE NO. 12 OF 1967

Employers in relation to the State Bank of India.

AND

Their workmen.

List of Documents admitted in evidence for the Employers.

| Distinguishing mark or number | Description of document & dt. | Date of admission | Whether admitted by consent |
|-------------------------------|---|-------------------|-----------------------------|
| Ext.M.1 | Copy of the letter dated 6-9-62 of Sri K.M. Ojha to the Agent, State Bank of India, Ranchi. | 14-11-67 | By consent. |
| Ext.M.2 | Copy of memorandum dated 28-11-62 regarding staff Miscellaneous transfer. | -do- | -do- |
| Ext.M.3 | Copy of memorandum dated 28-11-62 regarding staff miscellaneous. | -do- | -do- |
| Ext.M.4 | Copy of Dr. A.K. Roy's Certificate dated 29-11-62. | -do- | -do- |
| Ext.M.5 | Copy of letter dated 29-11-62 of Sri K.M. Ojha to the Agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M.6 | Copy of agent's letter to Mr. K.M. Ojha. | -do- | -do- |
| Ext.M.7 | Copy of General Secretary's letter dated 1-12-62 addressed to the Dy. Secretary and Treasurer, State Bank of India, Calcutta. | -do- | -do- |
| Ext.M.8 | Copy of resolution passed by State Bank of India Employees' Association, Ranchi unit at their meeting held on 1-12-62. | -do- | -do- |
| Ext.M.9 | Copy of the letter dated 1-12-62 of Sri K.M. Ojha to the Agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M.10 | Copy of certificate of Dr. A.K. Roy dated 2-12-62. | -do- | -do- |
| Ext.M.11 | Copy of letter dated 8-12-62 of the Agent, State Bank of India Employees' Association, Ranchi Unit. | -do- | -do- |
| Ext.M.12 | Copy of the letter of the Secretary, State Bank of India Employees' Association, Ranchi dated 10-12-62 to the Agent, State Bank of India, Ranchi | -do- | -do- |
| Ext.M.13 | Copy of the letter of the Deputy Secretary and Treasurer dated 10-12-62 to the General Secretary, State Bank of India Employees' Association, Calcutta. | -do- | -do- |

| Distinguish- ing mark or number | Description of document & dt | Date of admission | Whether admitted by consent |
|---------------------------------------|--|----------------------|-----------------------------------|
| Ext.M14 | Copy of the letter of the Agent, State Bank of India to the secretary, State Bank of India Employees' Association, Ranchi. | 14-II-67 | By consent. |
| Ext.M15 | Copy of the letter dated 14-12-62 of the General Secretary to the Deputy Secretary and Treasurer, State Bank of India, Calcutta | -do- | -do- |
| Ext.M16 | Copy of certificate of Dr. H Rahaman dated 16-12-62. | -do- | -do- |
| Ext.M17 | Copy of letter dated 19-12-62 of the Deputy Secretary and Treasurer, State Bank of India to the General Secretary, State Bank of India Employees' Association, Calcutta. | -do- | -do- |
| Ext.M18 | Copy of the letter of the Labour Inspector (Central), Ranchi, dated 1-1-63 addressed to Sri K. M. Ojha. | -do- | -do- |
| Ext.M19 | Copy of the letter dated 29-1-63 to the agent, State Bank of India, Ranchi addressed to Dr. S. S. Sahay. | -do- | -do- |
| Ext.M20 | Copy of letter dated 30-1-63 of Dr. S. S. Sahay to the agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M21 | Copy of the letter of the Secretary, State Bank of India Employees Association, Ranchi to the agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M22 | Copy of the Agent's letter dated 8-3-63 to Sri K. M. Ojha. | -do- | -do- |
| Ext.M23 | Copy of the Agent's letter dated 8-3-63 to the Secretary, State Bank of India Employees' Association, Ranchi. | -do- | -do- |
| Ext.M24 | Copy of the letter dated 19-3-63 of Sri K. M. Ojha to the Agent, State Bank of India, Ranchi. | -do | -do- |
| Ext.M25 | Copy of the letter of the Secretary, State Bank of India Employees' Association, Ranchi to the Agent, State Bank of India, Ranchi dated 3-4-63. | -do- | -do- |
| Ext.M26 | Copy of the letter of the Secretary, State Bank of India Employees' Association, Ranchi to the Agent, State Bank of India, Ranchi dated 3-4-63. | -do- | -do- |
| Ext.M27 | Copy of the representation dated 4-4-63 of Sri K. M. Ojha, Secretary, State Bank of India Employees' Association (Bengal Circle), Ranchi, addressed to the Conciliation Officer (C), Hazaribagh. | -do- | -do- |
| Ext.M28 | Copy of letter dated 10-4-63 of Sri K. M. Ojha to the Agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M29 | Copy of the letter dated 1-5-63 of the Conciliation Officer (C) Hazaribagh to Sri K. M. Ojha, Secretary. | -do- | -do- |

| Distinguishing mark or number | Description of document & date. | Date of admission | Whether admitted by consent |
|-------------------------------|---|-------------------|-----------------------------|
| Ext.M30 | Copy of letter dated 10-6-63 of Sri K. M. Ojha to the Agent, State Bank of India, Ranchi | 14-II-67 | By consent. |
| Ext.M31 | Copy of letter dated 10-7-63 of Sri K. M. Ojha to the Agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M32 | Copy of letter dated 10-8-63 of Sri K. M. Ojha to the Agent, State Bank of India Allahabad. | -do- | -do- |
| Ext.M33 | Copy of letter dated 10-8-67 of Sri K. M. Ojha to the Agent State Bank of India, Ranchi. | -do- | -do- |
| Ext.M34 | Copy of letter dated 10-8-67 of Sri K. M. Ojha to the Agent, State Bank of India, Allahabad. | -do- | -do- |
| Ext.M35 | Copy of letter dated 9-9-63 of Sri K. M. Ojha to the Agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M36 | Copy of the letter of the Agent to Sri K. M. Ojha. | -do- | -do- |
| Ext.M37 | Copy of certificate of the Doctor's in support of his leave application dated 10-II-63, 10-I-64, 9-4-64, 9-7-64, 17-10-64 etc. | -do- | -do- |
| Ext.M38 | Copy of letter dated 11-II-63 of Sri K. M. Ojha to the Agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M39 | Copy of letter dated 5-12-63 of Sri K. M. Ojha to the Agent. State Bank of India. Ranchi. | -do- | -do- |
| Ext.M40 | Copy of letter dated 12-12-63 of Dr. S. S. Sahay to the Agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M41 | Copy of letter dated 10-I-64 of Sri K. M. Ojha to the Agent, State Bank of India, Ranchi. | -do | -do- |
| Ext.M42 | Copy of the letter dated 26-2-64 of the Agent, State Bank of India, Allahabad to the Secretary and Treasurer, State Bank of India, Calcutta. | -do- | -do- |
| Ext.M43 | Copy of letter dated 9-4-64 of Sri K. M. Ojha to the Agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M44 | Copy of letter dated 9-7-64 of Sri K. M. Ojha to the Agent, State Bank of India, Ranchi. | -do- | -do- |
| Ext.M45 | Copy of the letter dated 1-8-64 of the Ministry of Labour & Employment to the Agent, State Bank of India, Ranchi and the General Secretary, State Bank of India Employees' Association, Calcutta-1. | -do- | -do- |

| Distinguishing mark or number | Description of document & dt. | Date of admission | Whether admitted by consent | Proved by |
|-------------------------------|---|-------------------|-----------------------------|-----------|
| Ext.M46 | Copy of the letter dated 17-10-64 of Sri K.M. Ojha to the Agent, State Bank of India, Ranchi. | 14-11-67 | By consent | |
| Ext.M47 | Copy of the letter dated 16-1-65 of Sri K.M. Ojha to the Agent, State Bank of India, Ranchi. | -do- | -do- | |
| Ext.M48 | Letter dated 14-11-62 of the Allahabad Branch to the Secretary and Treasurer, Calcutta regarding staff miscellaneous representation. | 22-12-67 | Proved by. | MWI |
| Ext.M49 | Letter dated 26-11-62 of the Deputy Secretary and Treasurer to the Agent, State Bank of India, Ranchi regarding Sri Kapil Muni Ojha. | -do- | -do- | -do- |
| Ext.M50 | Letter dated 26-11-67 of the Deputy Secretary and Treasurer, to the Agent, State Bank of India, Allahabad regarding staff miscellaneous representation. | -do- | -do- | -do- |
| Ext.M51 | Copy of letter dated 9-4-64 addressed to Sri Heerji, Under Secretary, Ministry of Finance, New Delhi. | -do- | -do | -do- |
| Ext.M52 | Letter of the Agent, State Bank of India, Ranchi, dated 11-8-62 to the Secretary and Treasurer, State Bank of India, Calcutta. | -do- | -do- | -do- |
| Ext.M53 | Letter of the Agent, State Bank of India, Ranchi, dated 7-9-62 to the Secretary and Treasurer, State Bank of India, Calcutta. | -do- | -do- | -do- |
| Ext.M54 | Notice | -do- | -do- | -do- |
| Ext.M55 | Notice dated 7-12-62. | do | do | -do- |
| Ext.M56 to Ext. 60 | 5 cheques. | -do- | -do- | WWI |
| Ext.M61 | Letter of the Agent, State Bank of India, Hatia dated 15-12-67 to the Agent, State Bank of India, Doranda. | 23-12-67 | -do- | WW2 |
| Ext. 62 | Letter of the Agent, State Bank of India, Ranchi dated 7-12-63 to Sri Kapil Muni Ojha. | -do- | -do- | -do- |

List of Documents admitted in evidence for the Workmen

| Distinguishing mark or number | Description of document & dt. | Date of admission | Whether admitted by consent or on proof |
|-------------------------------|---|-------------------|---|
| Ext.W1 | Copy of order of the Agent, State Bank of India, Ranchi, dated 28-11-62. | 14-11-67 | By consent. |
| Ext.W2 | Copy of letter of the Association to the Deputy Secretary and Treasurer, State Bank of India, Calcutta dated 1-12-62. | -do- | -do- |

| Distinguishing mark or number | Description of document & dt. | Date of admission | Whether admitted by consent or on proof |
|-------------------------------|--|-------------------|---|
| Ext.W3 | Copy of letter to the Agent, State Bank of India, Ranchi by Sri Kapil Muni Ojha along with a copy of Resolution passed by the Association dated 1-12-62. | 14-II-67 | By consent |
| Ext.W4 | Copy of the Deputy Secretary and Treasurer of the Bank to the Association dated 10-12-62. | -do- | -do- |
| Ext.W5 | Office copy of Associations letter dated 1-6-61 to the State Bank of India, Ranchi. | -do- | -do- |

Sd/- N. VENKATA RAO.

APPENDIX II

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD.

REFERENCE NO. 12 OF 1967

Employers in relation to the State Bank of India
AND
Their Workmen.

List of witnesses examined for the Employers.

| No. of witness | Name of witness | Date of examination |
|----------------|----------------------|---------------------|
| MW1 | Sri Supriya Gupta | 22-12-67 |
| MW2 | Sri R. P. Srivastava | 23-12-67 |

List of witness examined for the Workmen.

| No. of witness | Name of witness | Date of examination |
|----------------|---------------------|---------------------|
| WW1 | Sri Kapil Muni Ojha | 22-12-67 |

Sd/- N. VENKATA RAO.

[No. 51/76/63-LRIV.]

S.O. 345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal Bombay, in the Industrial Dispute between the employers in relation to Messrs. R. G. Govan and Company Private Limited, Bombay, and their workmen, which was received by the Central Government on 10th January, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BOMBAY
REFERENCE NO. CGIT-44 OF 1965

PARTIES:

Employers in relation to Messrs. R. G. Govan and Co., Private Ltd., Bombay.
 AND
 Their Workmen.

PRESENT:

Shri A. T. Zambre—*Presiding Officer.*

APPEARANCES:

For the Employers: Shri C. K. Jaisinghani, Advocate with Shri I. Loyola, General Assistant of the company.

For the Workmen: Shri S. R. Wangh, Advocate, with Shri I. S. Sawant, Assistant Secretary, Transport and Dock Workers' Union, Bombay.

STATE: Maharashtra.

INDUSTRY: Ports and Docks.

Bombay dated 29th December 1967

AWARD

The Government of India in the Ministry of Labour and Employment by their order No. 28/44/65/LRIV dated 9th July 1965 have referred to this Tribunal an industrial dispute existing between the employers in relation to Messrs. R. G. Govan and Co. Private Limited, Bombay and their workman Shri Ambal Bhogilal Talati in respect of the matters contained in the following schedule under section 10(1)(d) of the Act.

SCHEDULE

- 1 "Whether the termination of services of Shri Ambal Bhogilal Talati (Supervisor) by M/s. R. G. Govan and Company Private Ltd., Bombay, is justified?"
2. If not, to what relief is the said workman entitled?"
2. Messrs. R. G. Govan and Co. Private Limited, Bombay who are working as Stevedore Contractors for the Government of Maharashtra, Ministry of Foodgrain and Agriculture, Bombay and were handling food grains appointed Shri Ambal Bhogilal Talati as the dock supervisor at Wadi Bunder. It is alleged that the record of this employee was quite clean and he was proved to be a very efficient and successful dock supervisor but the 10th March 1965 when he wanted to resume duty the employers told him not to join duty from the next day i.e. 11th August, 1965 without serving any written notice or showing any cause for his discontinuance. He approached the Transport and Dock Workers' Union who represented his case. The Union approached the Conciliation Officer (Central) who tried to bring the parties to a settlement but the employers were not serious and did not even attend all the meetings and ultimately the Conciliation Officer sent a failure report and hence the Government referred the dispute to this Tribunal.

The union filed the written statement of claim on behalf of the workman on 21st September 1965. But when the matter was fixed for hearing it was found that the workman had died on 29th January 1967 and now the employers have contended that as the workman concerned has died no legal representative also is brought on record and as the proceedings do not survive the reference should be disposed of.

The learned representative on behalf of the workman has argued that by the statement of claim the worker had contended that the management had illegally terminated the services without notice and he was entitled to get the back wages and in view of the claim for money the proceeding will survive.

It is clear from the schedule that the dispute referred to this Tribunal is in respect of the termination of the service of the workman and this Tribunal is to decide whether the termination was justified and if not whether the workman was entitled to any relief. The Conciliation Officer's Report shows that the Assistant of the employers had remained present before the Officer on one day and had produced a receipt signed by the employee in full and final settlement upto 22nd February 1965. The receipt was dated 6th March 1965 and the union had contended that it was a forgery. The workman was employed by the firm only in the

month of July 1964 and there was also a dispute whether the employee had become permanent and was entitled to notice and the termination was illegal.

The appropriate Government has made this reference to this Tribunal under section 10(1)(d) of the Industrial Disputes Act. There is no provision in the Act for the substitution of the heirs or legal representative of the deceased workman as a party to such proceeding nor is there anything to show from the definition of the word "employee" that the legal representative of a deceased employee can be included as a workman and the question of substitution of the legal representative does not arise. This reference being under section 10(1)(d) it is not in dispute that what is referred is an industrial dispute. However it cannot be ignored that it pertains to an individual worker who is dead and the proceeding shall be deemed to have come to an end.

Even if we take into consideration the rights and liabilities of the parties it is clear that the termination of service was not improper. There was no right of any kind vested in the deceased against the employers. This is not an application under section 33C(2) of the Industrial Disputes Act and in the absence of a provision for the substitution of the legal representative I do not think that the proceedings would survive after the death of the workman—and hence the reference shall have to be disposed of

No order as to costs.

Sd./- A. T. ZAMBRE,
Presiding Officer.

Central Government Industrial Tribunal, Bombay

[No. 28(44)/65-LRTIV.]

O. P. TALWAR, Under Secy

(Department of Labour & Employment)

New Delhi, the 16th January 1968

S.O. 346.—In exercise of the powers conferred by section 99A of the Employees' State Insurance Act, 1948, (34 of 1948), the Central Government hereby directs that for the purpose of assessing the employer's special contribution payable under the notification of the Government of India in the late Ministry of Labour No. S.R.O. 279 dated the 6th February, 1952, (and for determining the amount of contributions payable under section 45A of the Employees' State Insurance Act, 1948) in respect of the employees of a factory or establishment where for any period an employer does not submit the periodical returns required under the Act and the said notification and where an inspection of the employers' records for such period has not been made, the wages of employees be calculated at the rate of Rs. 125 (Rupees one hundred and twenty five only) per employee per mensem, for arriving at the total wage bill and for determining the employee's weekly contribution under the First Schedule of the Employees' State Insurance Act, 1948.

[No. F. 20/73/67-HI.]

S.O. 347.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Western Engineering Works, 5A, Tardeo Road, Bombay-34 WB have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 31st day of October, 1967.

[No. 8/205/67/PF-II.]

S.O. 348.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Krishnan and Company, 18, 1st Main Road, Chamarajpet Bangalore-18,

have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall come into force on the 31st day of December, 1967.

[No. 8/207/67 PF-II.]

S.O. 349.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. United (India) Agencies, Hussain Chambers, 1st Floor, Parsi Bazar Street, Road, Ambarnath (Distt. Thana), (Maharashtra State) have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 1st day of December, 1967.

[No. 8(201)67-PF-II.]

S.O. 350.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. United (India) Agencies, Hussain Chambers, 1st Floor, Parsi Bazar Street, Fort, Bombay-1, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 31st day of October, 1967.

[No. 8/204/67/PF-II.]

S.O. 351.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Kishore Nursing Home, P.O. Kanke, Ranchi, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall come into force on the 31st day of December, 1967.

[No. 8/203/67/PF-II.]

S.O. 352.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Engel Supplies Company, Noble Chambers, Parsi Bazar Street, Fort, Bombay-1, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. 8(22)/67-PF-II.]

S.O. 353.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Torrance and Sons, 30 Chowringhee Road, Calcutta-16, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 31st day of October, 1967.

[No. 8/174/67/PF.II.]

S.O. 354.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. M. S. Sourirajan, Agent Southern Roadways (Private) Limited (Lorry Service), 167, Madurai Road, Palakarai, Trichy-8, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall come into force on the 31st day of December, 1967.

[No. 8/187/67/PF.II.]

New Delhi, the 17th January 1968

S.O. 355.—Whereas the Central Government is satisfied that the employees of the Small Industries Service Institute, Industrial Estate, Okhla, New Delhi, belonging to the Central Government in the Ministry of Industrial Development and Company Affairs, are in receipt of benefits substantially similar to the benefits provided under the Employees' State Insurance Act, 1948, (34 of 1948);

Now, therefore, in exercise of the powers conferred by section 90 of the Employees' State Insurance Act, 1948, (34 of 1948), the Central Government, after consultation with the Corporation, hereby exempts the above named factory from all the provisions of the said Act for a further period of one year with effect from the 14th January, 1968.

[No. F. 6(89)/67-HI.]

New Delhi, the 18th January 1968

S.O. 356.—In pursuance of sub-section (2) of section 9 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948 (46 of 1948), the Central Government hereby specifies the Officer-on-Special Duty, Office of the Chief Labour Commissioner (Central), New Delhi, also as an authority who may sanction the making of a report in writing of the facts constituting an offence under the Coal Mines Bonus Scheme, 1948, and makes the following amendment in the notification of the Government of India in the Ministry of Labour, Employment of Rehabilitation (Department of Labour and Employment) No. S.O. 3576, dated the 26th September, 1967, namely:—

In the Schedule annexed to the said notification, after item 3, the following item shall be inserted, namely:—

"3A. Officer on Special Duty, Office of the Chief Labour Commissioner (Central), New Delhi."

[No. 3(35)/67-PF.I(i).]

S.O. 357.—In pursuance of sub-section (2) of section 9 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948 (46 of 1948), the Central Government hereby specifies the Officer on Special Duty, Office of the Chief Labour Commissioner (Central), New Delhi, also as an authority who may sanction the making of a report in writing of the facts constituting an offence under the Andhra Pradesh Coal Mines Bonus Scheme, 1952, the Rajasthan Coal Mines Bonus Scheme, 1954, and the Assam Coal Mines Bonus Scheme, 1955, and makes the following amendment in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 3577, dated the 26th September, 1967, namely:—

In the Schedule annexed to the said notification, after item 3, the following item shall be inserted, namely:—

"3A. Officer on Special Duty, Office of the Chief Labour Commissioner (Central), New Delhi."

[No. 3(35)/67-PF.I(ii).]

CORRIGENDUM

New Delhi, the 16th January 1968

S.O. 358.—In the last paragraph of the notification (No. 8/48/67-PF-II dated the 25th April, 1967) of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 1598 dated the 25th April 1967, published in the Gazette of India, Part II, Section 3(ii), dated the 6th May, 1967, for "1st day of May, 1967" read "31st December, 1966".

[No. 8/48/67/PF-II.]

DALJIT SINGH, Under Secy.

(Department of Labour & Employment)

CORRIGENDUM

New Delhi, the 8th January 1968

S.O. 359.—In the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 3081 dated the 23rd August, 1967, published at page 3185 of the Gazette of India Part II Section 3(ii) dated the 2nd September, 1967, for the name "Shri Puranchandra Dayaldas Chaudhary" read "Shri Purnachandra Dayaldas Chaudhari"

[No. 8/76/66-ML.]

J. D. TEWARI, Under Secy.

(Department of Labour & Employment)

[Office of the Chief Labour Commissioner (Central)]

ORDER

New Delhi, the 16th January 1968

S.O. 360.—Whereas an application has been made by the establishment carrying on operation concerning any mine other than coal mentioned in the Schedule below for extension of the period specified in clause (b) of Section 19 of the Payment of Bonus Act, 1965 (No. 21 of 1965), for the payment of bonus to their employees for the accounting year ended on the 31st March, 1967;

And whereas Chief Labour Commissioner is satisfied that there are sufficient reasons so to do;

Now, therefore, in exercise of the powers conferred by the proviso to clause (b) of section 19 of the said Act, read with the notification of the Govt. of India in the Ministry of Labour & Employment No. WB-20(42)/65 dated the 28th August, 1965, I, O. Venkatachalam, Chief Labour Commissioner hereby extend the period within which the said bonus shall be paid by the establishment to 10 (Ten) months from the close of the accounting year ended on the 31st March, 1967.

THE SCHEDULE

- (1) Panduronga Timblo
Industries CAIXA
POSTAL NO. 242
Margao-Goa (India)

(In respect of Iron Ore Mines)

[No. BA-6(52)/67-LSI.]

O. VENKATACHALAM,
Chief Labour Commissioner (C).

(Department of Rehabilitation)

(Office of the Chief Settlement Commissioner)

New Delhi, the 12th January 1968

S.O. 361.—In exercise of the powers conferred on the Chief Settlement Commissioner by Sub-Section (2) of Section 34 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), he hereby delegates to Shri Sudershan Aggarwal, Settlement Commissioner (Appeals) the following powers:—

1. Power to hear appeals under Section 23 of the said Act.
2. Powers to hear revisions under Section 24 of the said Act.

[No. 5(7)AGZ/67.]

H. K. TANDON,
Chief Settlement Commissioner.

MINISTRY OF COMMERCE

(Office of the Chief Controller of Imports & Exports)

ORDER

New Delhi, the 8th January 1968

S.O. 362.—M/s. Hindustan Cables Ltd. P.O. Hindustan Cables, Dist. Burdwan, were granted an import licence No G/AU/1027176/R/IA 21/C/H 22 dated 5-2-67, for Rs. 1,00,000/- (Rupees one lakh only). They have applied for the issue of a duplicate Customs Purposes copy of the said licence on the ground that the original Customs Purposes copy has been lost. It is further stated that the Original Customs Purpose Copy was registered with the Customs authorities at Calcutta and un-utilised. It was utilised for Rs. NIL and the balance available on it was Rs. 1,00,000/-.

2. In support of this contention, the applicant has filed an affidavit. I am accordingly satisfied that the Original Customs Purposes copy of the said licence has been lost. Therefore, in exercise of the powers conferred under Sub-clause 9(cc) of the Imports (Control) Order 1955 dated 7-12-1955 as amended, the said original Customs Purposes copy of Licence No. G/AU/1027176/R/IA/21/C/H/22 dated 5-2-1966, issued to M/s. Hindustan Cables Ltd., is hereby cancelled.

3. A duplicate Customs Purposes copy of the said licence is being issued separately to the licensee.

[No. UD/267-HCL/65-66/PLS.]

. S. A. SESHAN,

Dy. Chief Controller of Imports and Exports.

(Office of the Chief Controller of Imports & Exports)
(I.L.S.)

ORDER

New Delhi, the 17th January 1968

S.O. 363.—M/s. B. Y. L. Nair Charitable Hospital, Dr. A. L. Nair Road Bombay-8 were granted an import licence No. G/AU/1020718/C/XX/26/C/H/25-26 dated 23rd February, 1967 for Rs. 15,380/- (Rupees Fifteen thousand three hundred & eighty only). They have applied for the issue of a duplicate customs purposes and exchange control purposes copy of the said licence on the ground that the original customs purposes and exchange control copy has been lost/misplaced without having been utilised at all.

2. In support of this contention, the applicant has filed an affidavit. I am accordingly satisfied that the original customs purposes and exchange control purposes copy of the said licence has been lost. Therefore, in exercise of the powers conferred under Sub-clause 9(cc) of the Imports (Control) Order 1955 dated 7th December, 1955 as amended, the said original customs purposes and exchange control purposes copy of licence No. G/AU/1030718/C/XX/26/C/H/25-26 dated

23rd February, 1967 issued to M/s B. Y. L. Nair Charitable Hospital, Bombay is hereby cancelled.

3. A duplicate customs purposes and exchange control purposes copy and letter of authority in favour of M/s. X-Ray and Electromedicals (India) Bombay-7 of the said licence is being issued separately to the licensee.

[No. B-6/Med/66-67/LVA/ILS.]

S. K. USMANI,

Dy. Chief Controller of Imports & Exports.

MINISTRY OF INDUSTRIAL DEVELOPMENT & COMPANY AFFAIRS

(Department of Company Affairs)

New Delhi, the 8th January 1968

S.O. 364.—In exercise of the powers conferred by sub-rule (1) of rule 5A of the Companies (Central Government) General Rules and Forms, 1956, the Central Government hereby appoints the Senior Technical Assistant, Office of the Registrar of Companies, Uttar Pradesh, Kanpur as prescribed authority for purposes of clause (a) of sub-section (1A) of section 108 of the Companies Act, 1956 (1 of 1956).

[No. F. 5/5/67-CL.V.]

F. N. SANYAL, Under Secy.

